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A.L.R. Index, Excise Taxes
A.L.R. Index, Income Tax
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Part Six. Income Taxes

XXV. Credits Against Tax Liability

§ 451. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

Tax credits are legitimate tools by which a government can ameliorate the tax burden while implementing social and economic goals.[1] However, tax credits are obtained by legislative grace and not by right.[2] Thus, courts construe tax statutes strictly against tax credits[3] and in favor of the taxing authority.[4] However, an unduly strict interpretation of a credit statute in order to add a few dollars to the state treasury is not fitting where the practical effect is double taxation.[5]

CUMULATIVE SUPPLEMENT

Cases:

Developer's application for low income housing tax credits complied with the requirements of housing agency's request for application (RFA), and thus developer was eligible to receive such credits, even though the development location point (DLP) that developer used to determine proposed development's proximity to services needed by tenants was located on the smaller of two parcels making up the development; developer represented that it intended to pursue a 'clustering' approach, under which a majority of the total number of units permitted on its two parcels could be placed on the smaller parcel, and nothing in the RFA required such approach to have been approved at the application stage. Fla. Admin. Code Ann. R. 67-48.002(33), 67-48.002(105). Brownsville Manor, LP v. Redding Development Partners, LLC, 224 So. 3d 891 (Fla. 1st DCA 2017).

[END OF SUPPLEMENT]

Footnotes

1 Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).

2 Watts v. Arizona Dept. of Revenue, 221 Ariz. 97, 210 P.3d 1268 (Ct. App. Div. 1 2009); Boulet v. State Tax Assessor, 626 A.2d 33 (Me. 1993); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

3 Watts v. Arizona Dept. of Revenue, 221 Ariz. 97, 210 P.3d 1268 (Ct. App. Div. 1 2009); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

4 Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

5 Henley v. Franchise Tax Bd., 122 Cal. App. 2d 1, 264 P.2d 179 (2d Dist. 1953).
As to credits to avoid double taxation, see §§ 452, 453, 456.

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XXV. Credits Against Tax Liability

§ 452. Purposes; taxes paid

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In some jurisdictions, credits against income tax due are allowed for the taxpayer's—
— support of certain dependents[1]
— contributions to charity[2] or scholarships[3]
— expenditures on pollution control equipment.[4]
— placement into service of qualified manufacturing and productive equipment within specified zones or areas.[5]
Further, credits are frequently allowed by statute to prevent or alleviate the burden of double taxation[6] although nondiscriminatory double taxation is not necessarily unconstitutional.[7]

A statute may allow for taxpayers to carry an unused credit forward into succeeding tax years.[8]

Footnotes

1 Com. ex rel. Allphin v. Sandmann, 280 S.W.2d 155 (Ky. 1955).

2 Patrick Henry Schools, Inc. v. Oxford, 215 Ga. 399, 110 S.E.2d 632 (1959).

3 Green v. Garriott, 221 Ariz. 404, 212 P.3d 96, 246 Ed. Law Rep. 1014 (Ct. App. Div. 1 2009), as amended, (Apr. 15, 2009).

4 Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue, 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).

5 SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009).

6 State v. Robinson Land & Lumber Co. of Ala., 262 Ala. 146, 77 So. 2d 641 (1954); Whittell v. Franchise Tax Bd., 231

Cal. App. 2d 278, 41 Cal. Rptr. 673 (1st Dist. 1964); In re Barton-Dobenin, 269 Kan. 851, 9 P.3d 9 (2000); Mannino v. Director, Div. of Taxation, 24 N.J. Tax 433, 2009 WL 2151837 (2009); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957); Tarrant v. Department of Taxes, 169 Vt. 189, 733 A.2d 733 (1999).
The resident tax credit is available to New Jersey residents for any income tax or wage tax imposed by another State with respect to income which is also subject to tax by New Jersey. Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).
As to the credit for taxes paid, generally, see §§ 453, 456.

[7] §§ 26, 371.

[8] § 484.

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XXV. Credits Against Tax Liability

§ 453. Taxes paid

Topic Summary | Correlation Table | References

West's Key Number Digest

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Income tax: Constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 12 A.L.R.2d 359

Credits are frequently allowed by statute to prevent or alleviate the burden of double taxation.[1] However, a resident taxpayer's entitlement to a tax credit for taxes paid to another state does not arise until the tax is actually paid to the other state.[2] A tax is "imposed" by a foreign jurisdiction within the meaning of a resident income tax credit statute if the foreign levy is required to be paid under a duly enacted statute, regulation, or other exercise of governmental authority.[3] The voluntary payment of a tax where no law requires such a payment does not constitute the imposition of that tax pursuant to a resident income tax credit statute.[4]

A statute allowing a credit for the payment of tax on net income has been interpreted to permit the taking of a credit for income tax paid by the trustees of a foreign trust to a foreign country.[5] However, a "franchise tax" imposed "upon the taxable income" of unincorporated businesses for the privilege of carrying on business was held not to be a net income tax for which a credit was allowed.[6] Moreover, a statute providing a credit for the amount of income tax actually paid by a resident to any other state or territory on account of business transacted or property held without the taxing state does not yield a credit for the payment to a foreign state of a corporate excise tax on net earnings.[7] The fact that a state statute allows a tax credit only for net income tax payments made outside the state and does not yield such a benefit for the payment of gross income taxes does not constitute an unconstitutional classification.[8]

CUMULATIVE SUPPLEMENT

Cases:

In general, statute relating to a credit against state income tax for similar taxes paid by an individual taxpayer to other states is designed to ensure that state receives, at a minimum, the state income tax due on the taxpayer's income that is attributable to the state, regardless of the another state's method or rate of taxation. West's Ann.Md.Code, Tax–General, § 10–703(a). Maryland State Comptroller of Treasury v. Wynne, 431 Md. 147, 64 A.3d 453 (2013).

[END OF SUPPLEMENT]

Footnotes

[1] § 452.

[2] Neer v. State ex rel. Oklahoma Tax Com'n, 1999 OK 41, 982 P.2d 1071 (Okla. 1999), as corrected, (June 4, 1999).

[3] Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).

[4] Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).

[5] Burgess v. State, 71 Cal. App. 2d 412, 162 P.2d 855 (2d Dist. 1945).

[6] Gardella v. Comptroller of Md., 213 Md. 1, 130 A.2d 752 (1957).

[7] State v. Algernon Blair, Inc., 285 Ala. 44, 228 So. 2d 803 (1969).

[8] Crocker-Anglo Nat. Bank v. Franchise Tax Bd., 179 Cal. App. 2d 591, 3 Cal. Rptr. 906 (1st Dist. 1960); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

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XXV. Credits Against Tax Liability

§ 454. Taxes paid to governmental subdivision of taxing state

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In some states, credits are allowed for taxes paid to a governmental entity within the taxing state.[1]

Footnotes

[1] Warm Springs Lumber Co. v. Horn, 217 Or. 219, 342 P.2d 143 (1959);
Oconto Co. v. Wisconsin Tax Commission, 193 Wis. 488, 214 N.W. 445 (1927).

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XXV. Credits Against Tax Liability

§ 455. Dividends

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In states in which a credit is provided for taxes paid outside the state on net income, a foreign tax on dividends is not a tax on net income and hence is not creditable.[1]

Footnotes

[1] Crocker-Anglo Nat. Bank v. Franchise Tax Bd., 179 Cal. App. 2d 591, 3 Cal. Rptr. 906 (1st Dist. 1960); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

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XXV. Credits Against Tax Liability

§ 456. Constitutional issues

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

A statute creating a state income tax credit for scholarship contributions by corporations does not violate a state constitutional provision prohibiting public money from being appropriated for or applied to any religious worship, exercise, or instruction or to the support of any religious establishment.[1] A state legislature also does not violate a state constitution's separation-of-powers provision when it retroactively amends a statute to provide that an income tax credit for pollution control equipment does not apply to motor vehicles where the statute does not retroactively overrule a court decision.[2]

Observation:

The income tax credit given to residents who pay income taxes to other states, and the resulting tax, is not a tax directly levied on foreign commerce, for purposes of the Foreign Commerce Clause,[3] but rather is levied on a resident individual to pay for services that the resident receives from the State.[4]

Footnotes

[1] Green v. Garriott, 221 Ariz. 404, 212 P.3d 96, 246 Ed. Law Rep. 1014 (Ct. App. Div. 1 2009), as amended, (Apr. 15, 2009).

[2] Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue, 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).

[3] U.S. Const. Art. I, § 8, cl. 3.

[4] In re Barton-Dobenin, 269 Kan. 851, 9 P.3d 9 (2000).
As to such credits, see §§ 453, 456.

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XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

Topic Summary | Correlation Table

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West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 457. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Subject to various limitations and exceptions, the gain or loss resulting from the disposition or conversion of property is usually recognized for income tax purposes.[1] Thus, a corporation's gain from the sale of corporate stock, which was deemed a sale of assets, constituted "business earnings" and therefore was apportionable in a corporation's tax base for purposes of assessing state excise tax.[2] Whether the disposition involves the sale, exchange, or conversion of capital assets is sometimes significant since under the various state income tax statutes, the resulting income may be exempt from taxation[3] or may be taxed at a lower rate or, if a loss, may be offset only against capital gains.

Some statutes specifically provide that a multistate taxpayer may allocate his or her capital gains and losses,[4] or simply his or her capital gains,[5] according to which state they are attributable.

Footnotes

1 § 384.

2 Newell Window Furnishing, Inc. v. Johnson, 311 S.W.3d 441 (Tenn. Ct. App. 2008).

3 § 384.

4 Western Natural Gas Co. v. McDonald, 202 Kan. 98, 446 P.2d 781 (1968).

5 Com. v. Scott Paper Co., 425 Pa. 444, 228 A.2d 904 (1967).

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XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 458. What is a capital asset

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

By statute, a ''capital asset'' has been defined to include all property of a taxpayer, whether or not connected with his or her trade or business, except:[1]

- stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year

- property held by the taxpayer primarily for sale to customers in the ordinary course of his or her trade or business

- property, used in a trade or business, of a character which is subject to the allowance for deductible depreciation

Thus, gain from the sale of property is "business income" if the property was used in the taxpayer's regular business operations.[2] On the other hand, royalties received under an oil and gas lease have been characterized as a capital gain.[3]

Footnotes

1 Schlesinger v. Fontenot, 235 La. 47, 102 So. 2d 488 (1958).

2 Blessing/White, Inc. v. Zehnder, 329 Ill. App. 3d 714, 263 Ill. Dec. 572, 768 N.E.2d 332 (1st Dist. 2002); In re Kroger Co., 270 Kan. 148, 12 P.3d 889 (2000), as corrected, (Dec. 21, 2000); Union Carbide Corp. v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).

3 Western Natural Gas Co. v. McDonald, 202 Kan. 98, 446 P.2d 781 (1968).

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XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 459. What is a sale or exchange

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3468, 3469

The capital gain or loss which may be given special treatment for income tax purposes is the gain or loss from "the sale or exchange" of capital assets.[1] The term "exchange," within a statute concerning the treatment of capital gain for income tax purposes, contemplates that each party transfers something to the other.[2] Under a statute imposing a tax on gains for the sale or exchange of land, taxable events are when the owner transfers title to the property or vests title to the property in another person and when the existing option is transferred to a third party by an optionee.[3]

A corporation's gain or loss from the sale of stock of a subsidiary is treated as a business income gain or loss if the corporation and the subsidiary are a unitary business.[4] Many state income tax laws specifically exempt from taxes the transfers of property between spouses which arise incident to divorce.[5]

Observation:

A taxpayer's sale of his or her partnership interest in an accounting partnership did not constitute the sale of a business under a statute providing for an exclusion to capital gains tax.[6]

The cancellation of a lease is not the sale or exchange of a capital asset so that an amount received by a lessee for such cancellation is not a capital gain.[7] Similarly, the surrender of a promissory note by the owner thereof, upon payment in full by

the maker, has been held not to be a "sale or other disposition" of such note by the owner within the meaning of a statute using such language in granting special tax benefits to capital gains.[8] Also, although timber in the hands of a paper corporation is a capital asset, the corporation's cutting of it for use in its own business is not a sale or exchange of a capital asset.[9]

One who has received income from a dividend which was wholly a distribution of capital is not subject to a tax on the amount by which the dividend exceeded the cost of the stock.[10]

Footnotes

1 Schlesinger v. Fontenot, 235 La. 47, 102 So. 2d 488 (1958).

2 Peters v. Department of Revenue, 266 Or. 488, 513 P.2d 752 (1973).

3 Harden v. Vermont Dept. of Taxes, 134 Vt. 122, 352 A.2d 685 (1976).

4 Steiner Corp. v. Auditing Div. of Utah State Tax Com'n, 1999 UT 53, 979 P.2d 357 (Utah 1999).
As to unitary businesses, generally, see §§ 479, 481.

5 Collins v. Oklahoma Tax Commission, 1968 OK 148, 446 P.2d 290 (Okla. 1968); Bettinger v. Bettinger, 183 W. Va. 528, 396 S.E.2d 709, 10 A.L.R.5th 945 (1990); Krueger v. Wisconsin Dept. of Revenue, 124 Wis. 2d 453, 369 N.W.2d 691 (1985).

6 Ranniger v. Iowa Dept. of Revenue and Finance, 746 N.W.2d 267 (Iowa 2008).

7 United Cigar-Whelan Stores Corp. v. District of Columbia, 176 F.2d 952 (D.C. Cir. 1949).

8 King v. Oklahoma Tax Com'n, 1944 OK 247, 194 Okla. 357, 151 P.2d 918 (1944).

9 Com. v. Scott Paper Co., 425 Pa. 444, 228 A.2d 904 (1967).

10 Commissioner of Corporations & Taxation v. Fopiano, 324 Mass. 304, 85 N.E.2d 776 (1949).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 460. What is a sale or exchange—Dissolution of corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3468, 3469

The surrender of stock by the taxpayer in consideration for his or her share of the corporate assets, on the liquidation of the corporation, has been held to be, in effect, a sale or exchange.[1] Similarly, the distribution of all the assets of a corporation to its sole stockholder in complete and final liquidation of all of his or her stock has been treated as a sale of his or her stock and the entire gain computed and taxed as a capital gain.[2] A stockholder is subject to capital gains tax on any profits that he or she receives on the liquidation of a corporation although they resulted from an increase in the value of its capital assets.[3] A dissolved corporation that sells its assets and distributes the proceeds of sale proportionately to its stockholders is itself subject to income tax on the net gain.[4]

Footnotes

1 Lynch v. State Bd. of Assessment and Review, 228 Iowa 1000, 291 N.W. 161 (1940).
As to statutes providing that no gain or loss shall be recognized if stock or securities in a corporation are exchanged solely in pursuance of a plan of reorganization, see § 464.

2 Oxford v. Carter, 216 Ga. 821, 120 S.E.2d 298 (1961); Follett v. Commissioner of Corporations and Taxation, 267 Mass. 115, 166 N.E. 575, 65 A.L.R. 143 (1929).

3 Follett v. Commissioner of Corporations and Taxation, 267 Mass. 115, 166 N.E. 575, 65 A.L.R. 143 (1929); In re Bellin's Estate, 210 Wis. 670, 247 N.W. 331 (1933) (decided under a statute to that effect).

4 Republic Natural Gas Co. v. Axe, 197 Kan. 91, 415 P.2d 406 (1966).

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B. Recognition of Gain or Loss

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XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 461. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469, 3513

It is not unconstitutional to tax income that accrued before the taxpayer became a resident of the taxing state but was realized after he or she became such a resident because gains on the disposition of property are taxable on the theory that all accretions in value are income in the year of realization regardless of when they accrued.[1] Installment payments received for the sale of notes are taxable in the year in which they are received.[2]

Footnotes

1 Sweetland v. Franchise Tax Bd., 192 Cal. App. 2d 316, 13 Cal. Rptr. 432 (1st Dist. 1961).
Income realized by taxpayers who sold a California home while they lived in California and whose gain was realized at that time but not recognized for federal income tax purposes until after they had moved to Oregon was not subject to Oregon income tax. Denniston v. Department of Revenue, 287 Or. 719, 601 P.2d 1258 (1979).

2 Katzenberg v. Comptroller of Treasury, 263 Md. 189, 282 A.2d 465 (1971).

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B. Recognition of Gain or Loss

§ 462. Exchange of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469, 3513

A statute may provide that no gain or loss shall be recognized if property held for productive use in trade, business, or investment is exchanged solely for property of a like kind to be held either for productive use in trade, business, or investment.[1] The theory of such a statute is that the exchange is considered as a mere change of form, the new property simply taking the place of the yielded property.[2] A statute of the type under consideration applies even where the property yielded was situated in another state and at a time when the taxpayer was not a resident of the taxing state.[3] Where the exchanged property is not sold, a court will not be confined to bookkeeping entries in deciding whether the exchange constitutes a taxable event.[4]

Under some statutes, where there are several affiliated corporations, they are regarded as a unified business entity within which transfers of assets are permitted without incurring tax liability, and the latter attaches only when assets are disposed of outside the interrelated group.[5] No taxable gain accrues to partners of a dissolved partnership who receive the entire stock of a new corporation set up through the conveyance to the corporation of the old partnership assets and by the contribution of one partner of additional tangible property.[6]

Exchanges of stock made as a result of a reorganization are treated elsewhere.[7]

Footnotes

1 Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968) (holding further that basis of the newly acquired property is the same as that of the property exchanged).

2 Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968).

[3] Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968).

[4] Commissioner of Corporations and Taxation v. Newton, 324 Mass. 409, 86 N.E.2d 524 (1949).

[5] Bennett Ass'n v. Utah State Tax Commission, 19 Utah 2d 108, 426 P.2d 812 (1967).

[6] Commissioner of Corporations and Taxation v. Newton, 324 Mass. 409, 86 N.E.2d 524 (1949).

[7] § 464.

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 463. Exchange of property—Patents

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469, 3513

Where an individual taxpayer transfers certain patents to a corporation in exchange for corporate stock, and the stock is not sold, he or she is not subject to capital gains tax.[1] However, a corporate taxpayer that transferred patents to another corporation for stock in that corporation and carries the patents on its books at a certain sum is taxable on such book valuation of the patents, apparently as a capital gain.[2]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer-husband indirectly controlled corporation to which he transferred patents he held, and, thus, he did not transfer all substantial rights to patents and corporation's royalty payments to married taxpayers, thereby making payments ineligible for capital gain treatment; although husband formally transferred all substantial rights in patents to corporation, and taxpayers owned less than 25 percent of corporation, taxpayers formed corporation with wife's sister and long-time friend, individuals who exercised no independent judgment and acted in their capacities as directors and officers of corporation at husband's direction, which meant that corporation would take practically any action requested by husband, including return of patent rights for no consideration, without regard to corporation's shareholders and without regard to personal interests of sister and friend. 26 U.S.C.A. § 1235(a); 26 C.F.R. § 1.1235–2(b)(1). Cooper v. Commissioner of Internal Revenue, 877 F.3d 1086 (9th Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

[1] Van Heusen v. Commissioner of Corporations and Taxation of Mass., 257 Mass. 488, 154 N.E. 257 (1926).

[2] C. F. Burgess Laboratories v. Conway, 195 Wis. 324, 218 N.W. 172 (1928).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 464. Reorganization

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469, 3513, 3514

A.L.R. Library

Income tax consequences to shareholder of dividend in kind, 56 A.L.R.2d 474

State income tax statutes frequently provide to the effect that no gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation.[1] A statute of this type operates in many cases to prevent a taxpayer from deducting a fictitious loss while in other cases, it may relieve him or her from immediate taxation on a paper profit.[2]

In a reorganization, not only must each step be analyzed in order to determine whether a taxable incident has occurred but no intervening step may also be disregarded.[3] The acquisition of the outstanding stock of one corporation by another in exchange for shares of the latter is not a reorganization of the former corporation but is a sale, the resulting gain from which is taxable income.[4] The fact that the parties call a transaction a "reorganization" does not make it so.[5]

A corporate taxpayer's capital gains from a one-time purchase and sale of its stock constituted business earnings, under a functional test, and thus were subject to excise tax.[6] The stock was an integral part of the taxpayer's property that contributed materially to the generation of income in that the transaction was a necessary step in the reorganization of the corporate structure that reduced its expenses and eliminated one level of federal taxation.[7]

Footnotes

[1] Anderson v. Commissioner of Taxation, 253 Minn. 528, 93 N.W.2d 523 (1958); Beard v. South Carolina Tax Commission, 230 S.C. 357, 95 S.E.2d 628 (1956); Walter Alexander Co. v. Wisconsin Tax Commission, 215 Wis. 293, 254 N.W. 544 (1934).

[2] Cudahy v. Wisconsin Tax Commission, 226 Wis. 317, 276 N.W. 748 (1937).

[3] First Nat. Bank of Or. v. State Tax Commission, 244 Or. 28, 415 P.2d 744 (1966); Wisconsin Elec. Power Co. v. Wisconsin Dept. of Taxation, 251 Wis. 346, 29 N.W.2d 711 (1947).

[4] Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

[5] Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

[6] Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

[7] Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 465. Worthless securities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467, 3514

Some state income tax statutes provide that if any security that is a capital asset becomes worthless during the taxable year, the loss so resulting shall be treated as a loss from the sale or exchange of a capital asset.[1]

Footnotes

[1] Super Valu Stores, Inc. v. Commissioner of Taxation, 291 Minn. 169, 190 N.W.2d 67 (1971).

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XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 466. Involuntary conversions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467, 3513

Under some state income tax statutes, a taxpayer whose property has been involuntarily converted by condemnation may use the award or compensation from the condemnation to purchase similar property without having a taxable gain for income tax purposes within a certain period of time from the close of the first taxable year in which the gain was realized.[1] However, in order to claim the benefit pursuant to such a statute, the taxpayer is required to strictly comply therewith.[2] Thus, where a taxpayer closes title on a purchase of property after the specified time limit, but where the proposed purchase receives a conditional court approval within the time limit of the statute, the purchase is not within the terms of the statute.[3] Further, the requirements of such a statute are not met where the proceeds from a forced sale of vacant, improved farmland, originally purchased for speculative purposes, are reinvested for the production of rental income in urban properties that include structures suitable for various retail and wholesale establishments.[4]

In some jurisdictions, when the property of the taxpayer is taken by condemnation, the taxpayer is liable for capital gains tax on the excess of the payment for the property over its adjusted basis.[5]

Footnotes

1 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

2 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

3 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

4 Rogers v. Oklahoma Tax Commission, 1970 OK 11, 466 P.2d 650 (Okla. 1970).

[5] Wassom v. State Tax Commission, 241 Or. 388, 406 P.2d 151 (1965).

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XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

A.L.R. Library

A.L.R. Index, Capital Gain or Loss
A.L.R. Index, Income Tax
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XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

§ 467. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Usually, the basis of property sold is, by statute, its value on the date when it is acquired.[1] Only genuine debt is included in the basis of property for tax purposes, and a property's basis is its fair market value.[2] The fair market price or value of property is usually the result of the opposing views of a willing seller not compelled to sell and a willing purchaser not required to buy.[3] Where property must be valued as of a past date, as when its value on that date is the basis for computing gain or loss on its subsequent disposition or conversion, its value as of that date must be determined in the light of the then known facts.[4] In its determination of the basis of property exchanged for purposes of determining the gain from the later sale of the new property, the court will look to real facts and not be confined to bookkeeping entries.[5]

Net gains or income from the disposition of property does not require using the taxpayer's federal adjusted basis to compute the gain.[6]

Footnotes

1 Bingham v. Long, 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).

2 Miller v. Department of Revenue, State of Or., 327 Or. 129, 958 P.2d 833 (1998).

3 Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

4 Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

5 First Nat. Bank of Birmingham v. State, 262 Ala. 155, 77 So. 2d 653 (1954).

[6] Koch v. Director, Div. of Taxation, 157 N.J. 1, 722 A.2d 918 (1999).

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C. Computation of Gain or Loss

§ 468. Exchange of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469

In states where there is no provision for the delay of the recognition of gain upon the exchange of property,[1] the taxpayer is liable for income tax on any gain achieved due to cash received in addition to the property received.[2]

Footnotes

1 As to exchanges of property, generally, see § 462.

2 Walter Alexander Co. v. Wisconsin Tax Commission, 215 Wis. 293, 254 N.W. 544 (1934); State v. Lee, 172 Wis. 381, 178 N.W. 471 (1920).

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XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

§ 469. Property disposed of by trustee or executor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Where there is a sale by executors during the settlement of an estate of intangible property owned by a testator at his or her death, the basis for ascertaining whether there has been a gain or loss is the value of such property at the time of the death of the testator and not its value at the time of its acquisition by him or her.[1]

Footnotes

[1] Bingham v. Long, 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).

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XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3473 to 3476, 3482, 3483, 3508

A.L.R. Library

A.L.R. Index, Income Tax
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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 470. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3473, 3482, 3508

A.L.R. Library

Domicil for state tax purposes of wife living apart from husband, 82 A.L.R.3d 1274

Domicile forms the basis for imposition of state income tax on the income of an individual.[1] Income tax laws may also impose the tax either on "inhabitants" or on "residents," and there is some difference of opinion as to the construction of these terms.[2] However, taxation of the income of a non-resident, earned outside of a state, is constitutionally beyond the State's reach.[3]

Under some laws, inhabitancy has been regarded as the equivalent of domicil.[4] The distinction between the terms "domicile" and "residence," for taxation purposes, is often subtle, but the terms are not synonymous.[5]

CUMULATIVE SUPPLEMENT

Cases:

Statutory occasional-entrants rule, stating that municipal corporation shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in a

calendar year unless individual is a professional athlete, applies to nonresidents who perform some but not all of their work within the taxing municipality. R.C. § 718.011. Hillenmeyer v. Cleveland Bd. of Rev., 144 Ohio St. 3d 165, 2015-Ohio-1623, 41 N.E.3d 1164 (2015), cert. denied, 136 S. Ct. 491 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Grasso v. Oklahoma Tax Com'n, 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011).

2 Ness v. Commissioner of Corporations and Taxation, 279 Mass. 369, 181 N.E. 178, 82 A.L.R. 977 (1932). As to the distinction between domicil, inhabitancy, residence, etc., see Am. Jur. 2d, Domicil §§ 1 et seq.

3 § 477.

4 Ness v. Commissioner of Corporations and Taxation, 279 Mass. 369, 181 N.E. 178, 82 A.L.R. 977 (1932).

5 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 471. Who are residents and domestic corporations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3473, 3482, 3483, 3508

A.L.R. Library

Domicil for state tax purposes of wife living apart from husband, 82 A.L.R.3d 1274

A person's "residence," for taxation purposes, is the place of actual abode, not a home that a person expects to occupy at some future time, and a "place of abode" is something more than a place of temporary sojourning, implying a degree of permanence.[1] No particular length of time is necessary to establish "residence" for taxation purposes.[2] Ultimately, each taxation case in which it must be determined whether a place is a person's residence must be decided on its own facts.[3] "Domicile," for taxation purposes, has a broader meaning than "residence" and includes residence—it requires an actual residence plus the intent to remain in a particular place.[4]

In determining whether a taxpayer has established state domicile, the fact finder may accord the party's activities greater weight than his or her declaration of intent.[5] Further, a taxpayer attempting to change the state in which the taxpayer is domiciled must actually reside in the new state at the time when intent is formed to make the new state the taxpayer's permanent home.[6]

Various factors should be considered in making the determination of where a person maintains residency for taxation purposes, such as the party's address used on—
— federal income tax returns.[7]
— utility bills.[8]

— voter registration.[9]
— driver's license.[10]
— vehicle registration.[11]
— property assessments.[12]
The state where a taxpayer files a homestead exemption is also considered.[13]

In some states, income from intangible property, including interest and dividends, has its taxable situs at the domicile of the owner.[14]

Footnotes

1 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

2 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

3 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

4 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000); State Tax Com'n v. Earnest, 627 So. 2d 313 (Miss. 1993).
Taxpayers' physical presence in another state looking for a house was not enough to effect a change in domicile, for purposes of the state income tax, where they did not at that time obtain, or intend to obtain, a residence in that other state. Pratt v. State Tax Com'n, 128 Idaho 883, 920 P.2d 400 (1996).

5 Benjamin v. Utah State Tax Com'n, 2011 UT 14, 250 P.3d 39 (Utah 2011).

6 Sanchez v. Commissioner of Revenue, 770 N.W.2d 523 (Minn. 2009).

7 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

8 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

9 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000); Whittell v. Franchise Tax Bd., 231 Cal. App. 2d 278, 41 Cal. Rptr. 673 (1st Dist. 1964); Piche v. Department of Taxes, 152 Vt. 229, 565 A.2d 1283 (1989).
A taxpayer's registration to vote in Maine during certain year and swearing of an oath that he was, at that time, a resident of Maine precluded the taxpayer from claiming that he was not a resident of Maine during that tax year. State v. Thompson, 2008 ME 166, 958 A.2d 887 (Me. 2008).

10 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000); Pletcher v. Montana Dept. of Revenue, 280 Mont. 419, 930 P.2d 656 (1996).

11 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

12 Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).

13 State Tax Com'n v. Earnest, 627 So. 2d 313 (Miss. 1993).

14 Richards v. Idaho State Tax Com'n, 131 Idaho 476, 959 P.2d 457 (1998).
A ticket that was purchased by a taxpayer out of state at a racetrack and on which he collected winnings was intangible personal property within the income tax statute, and the winnings were assignable to the state of the taxpayer's domicile. Hillstrom v. Commissioner of Revenue, 270 N.W.2d 265 (Minn. 1978).

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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 472. Where taxpayer is resident only part of taxable year

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3483

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 234 (Complaint, petition or declaration—To recover personal income tax paid under protest—Taxpayer received income prior to becoming a resident of taxing state)

A statute may provide that the income tax liability of persons who move into or out of the taxing state within the taxable year shall be determined for such year by the ratio of time that the residence of such taxpayer in the taxing state bears to the entire calendar or fiscal year.[1] However, such a statute does not apply where the part of the income earned and received by the taxpayer while a nonresident is readily apportionable with reasonable certainty.[2] A similar rule, following the meaning of such a statute and its interpretation, has evolved in a jurisdiction in which no such statute obtained.[3]

For taxpayers who travel extensively or maintain residences in more than one state, no particular length of time is required to establish one's domicile though there must be residence attended by such circumstances surrounding its acquirement as to manifest a bona fide intention of making it a fixed and permanent place of abode.[4] A taxpayer who maintains permanent employment in another state is a resident of the taxing state for purposes of state income tax liability when the taxpayer owns a home in the taxing state to which he or she returns when he or she does not have to work.[5]

CUMULATIVE SUPPLEMENT

Cases:

The statutory residence provision, for imposing personal income tax on individuals who are not domiciled in New York State but who maintain a permanent place of abode in the State and spend more than 183 days of the taxable year in the State, fulfills the significant function of discouraging tax evasion by individuals who are really and for all intents and purposes residents of the State but who have maintained a voting residence elsewhere and insist on paying taxes to New York State as nonresidents. McKinney's Tax Law §§ 601, 605(b)(1)(A); New York City Administrative Code, § 11–1701. Gaied v. New York State Tax Appeals Tribunal, 22 N.Y.3d 592, 983 N.Y.S.2d 757, 6 N.E.3d 1113 (2014).

[END OF SUPPLEMENT]

Footnotes

[1] Greene v. Wisconsin Tax Commission, 221 Wis. 531, 266 N.W. 270 (1936).
As to the definitions of "residence" and "domicile" for tax purposes, see §§ 470, 471.

[2] Greene v. Wisconsin Tax Commission, 221 Wis. 531, 266 N.W. 270 (1936).

[3] Martin v. Gage, 281 Ky. 95, 134 S.W.2d 966, 126 A.L.R. 449 (1939).

[4] Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000).
Taxpayer, a Florida domiciliary, fit within the statutory definition of a "nondomiciliary resident" where she maintained an abode in the state and spent, in the aggregate, more than one-half of the tax year in the state. Luther v. Commissioner of Revenue, 588 N.W.2d 502 (Minn. 1999).

[5] Pletcher v. Montana Dept. of Revenue, 280 Mont. 419, 930 P.2d 656 (1996).

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XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 473. Situs of consummation of sales

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3473, 3474, 3482, 3508

Where state income tax statutes tax income derived from sources within the state but not that derived from sources outside the state, the place where sales were consummated has been a primary consideration in determining the source of particular income in some cases.[1]

Footnotes

[1] Montgomery Ward & Co. v. State Tax Commission, 151 Kan. 159, 98 P.2d 143 (1940).

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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 474. Income derived from outside jurisdiction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3473 to 3476, 3482, 3508

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 185 (Complaint, petition or declaration—For declaratory or injunctive relief—To enjoin assessment and collection of state income tax on domestic corporation's income derived partly outside state—Statute violates due process and equal protection by exempting domestic corporations doing business wholly outside state)

A State may constitutionally tax a resident or a domestic corporation on income derived from sources outside of the state.[1]

Incorporation by a state or permission to do business there forms the basis for proportionate taxation of a company.[2] Further, wages received by taxpayers, a married couple, from private employment both within and outside the country are taxable.[3]

Footnotes

1 Oklahoma Tax Com'n v. Chickasaw Nation, 515 U.S. 450, 115 S. Ct. 2214, 132 L. Ed. 2d 400 (1995).
State taxation of income earned outside the state by one domiciled within the state is not within the purview of the rule that tangibles located outside the state of the owner's domicil are not subject to taxation within it and is not so arbitrary or unreasonable as to deprive the taxpayer of property without due process of law. Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).

As to the taxation of income from interstate or foreign commerce, see § 382.
As to discrimination in the exemption of income derived from outside the jurisdiction, see § 377.

[2] Mandell v. Auditing Div. of Utah State Tax Com'n, 2008 UT 34, 186 P.3d 335 (Utah 2008).

[3] Jibilian v. Franchise Tax Bd., 136 Cal. App. 4th 862, 39 Cal. Rptr. 3d 123 (2d Dist. 2006).

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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

§ 475. Income derived from outside jurisdiction—Dividends on stocks of foreign corporations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3473, 3475

A State may tax residents on income derived from dividends on the stock of foreign corporations, and statutes imposing such a tax have been sustained against constitutional objections based on discrimination.[1] However, dividends received by a domestic corporation on stock owned by it in a foreign corporation are not taxable under a statute imposing a tax upon corporate income "from all sources within this state" where the operations of the foreign corporation from which it derived the earnings to pay the dividends are entirely outside the taxing state.[2]

Footnotes

1 Conner v. State, 82 N.H. 126, 130 A. 357 (1925).

2 Petition of Union Elec. Co. of Missouri, 349 Mo. 73, 161 S.W.2d 968, 143 A.L.R. 141 (1942).

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3406, 3407, 3431, 3451, 3474 to 3477, 3535

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3406, 3407, 3431, 3451, 3474 to 3477, 3535

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 235

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

1. In General

§ 476. Income derived from within jurisdiction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3406, 3407, 3431, 3451, 3474 to 3477

A State may constitutionally impose a tax on the income of a nonresident or a foreign corporation derived from property owned within the state or from any business, trade, or profession carried on within its borders.[1] Due process of law is not denied either by the imposition of an income tax upon a nonresident or foreign corporation[2] nor by enforcing payment of it from the nonresident's property within the state.[3]

Income that an out-of-state corporation derived from intangible property located within a state may be subject to state income tax.[4] Thus, a corporation's trademarks and trade names that are used by franchisees in a state provides a business situs for purposes of taxation in the state even though the corporation had no physical presence or other contact with the State.[5]

CUMULATIVE SUPPLEMENT

Cases:

State's treatment, as state source income for purposes of personal income taxation of nonresident former shareholders in foreign S corporation, of gain from sale of shareholders' stock, in a transaction which the corporation and purchaser elected to treat as asset sale for federal corporate income tax purposes, did not violate state constitutional prohibition against taxing the sale of intangible personal property of a nonresident; tax was not an ad valorem tax by definition or application, nor an excise tax levied solely because of ownership or possession, but instead, was based on income generated by intangibles which were derived from New York sources. McKinney's Const. Art. 16, § 3; 26 U.S.C.A. § 338(h)(10); McKinney's Tax

Law § 632(a)(2). Burton v. New York State Dept. of Taxation and Finance, 25 N.Y.3d 732, 37 N.E.3d 718 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Oklahoma Tax Com'n v. Chickasaw Nation, 515 U.S. 450, 115 S. Ct. 2214, 132 L. Ed. 2d 400 (1995).
As to the taxation of income from interstate or foreign commerce, see § 382.
As to discrimination between residents and nonresidents, or between domestic and foreign corporations, see § 378.

2 People of State of New York ex rel. Whitney v. Graves, 299 U.S. 366, 57 S. Ct. 237, 81 L. Ed. 285 (1937); Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

3 Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

4 KFC Corp. v. Iowa Dept. of Revenue, 792 N.W.2d 308 (Iowa 2010), cert. denied, 132 S. Ct. 97, 181 L. Ed. 2d 26 (2011).

5 KFC Corp. v. Iowa Dept. of Revenue, 792 N.W.2d 308 (Iowa 2010), cert. denied, 132 S. Ct. 97, 181 L. Ed. 2d 26 (2011).

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

1. In General

§ 477. Income derived from without jurisdiction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3406, 3407, 3431, 3451, 3474 to 3477

States are limited in their ability to tax the income of non-domiciled taxpayers by the Due Process[1] and Commerce Clauses[2] of the United States Constitution.[3] The broad inquiry in determining whether a State may tax value earned by a nondomiciliary corporation outside its borders is whether the taxing power exerted by the State bears a fiscal relation to the protection, opportunities, and benefits given by the State, that is, whether the State has given anything for which it can ask return.[4]

Observation:

Under the "source of income" concept, income produced outside a state is not subject to state taxation.[5] Similarly, a State may not, when imposing an income-based tax, tax value earned outside its borders.[6]

The State may not tax a nondomiciliary where the relation between the State and the subject of the tax is merely remote or incidental to the interstate transaction.[7] Accordingly, a State cannot tax the gain on sales of personal property by a nonresident outside of its borders.[8]

Footnotes

[1] U.S. Const. Amend. XIV, § 1.

[2] U.S. Const. Art. I, § 8, cl. 3.

[3] Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

[4] ASARCO Inc. v. Idaho State Tax Com'n, 458 U.S. 307, 102 S. Ct. 3103, 73 L. Ed. 2d 787 (1982).

[5] Jay Wolfe Imports Missouri, Inc. v. Director of Revenue, 282 S.W.3d 839 (Mo. 2009).

[6] Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983); Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).
Taxation of the income of a non-resident, earned outside of the state, is constitutionally beyond the State's reach. State v. Thompson, 2008 ME 166, 958 A.2d 887 (Me. 2008).

[7] Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994).

[8] People ex rel. Stafford v. Travis, 231 N.Y. 339, 132 N.E. 109, 15 A.L.R. 1319 (1921).

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 478. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3535

A.L.R. Library

Construction and application of Uniform Division of Income for Tax Purposes Act, 8 A.L.R.4th 934

Where there is no dispute that a taxpayer has done some business in the taxing state, the court's inquiry shifts from whether the State may tax to what it may tax.[1] A State may tax an apportioned share of value generated by intrastate and extrastate activities of a multistate enterprise if those activities form part of a unitary business.[2] Thus, in the case of an affiliated group of corporations with operations in multiple states, courts apply the "unitary-business principle" to determine whether a particular member of the affiliated group has the requisite minimal state connection to include its income in the tax base.[3]

Observation:

The source of income inquiry[4] permits a corporation to apportion its taxable income only where it can show that it had income from outside the state.[5]

CUMULATIVE SUPPLEMENT

Cases:

Disclaimer on corporate taxpayer's transfer pricing studies regarding intercompany transactions, which stated that the reports did not reach any conclusions regarding state tax issues, did not render studies irrelevant to whether taxpayer's income was fairly reflected under standard sourcing rules in calculating its adjusted gross income tax (AGIT) liability for income sourced to Indiana; disclaimer and economist who prepared studies indicated that standard disclaimer was provided to limit the accounting firm's professional responsibility to only the question of whether the purchase price paid between related entities satisfied the requirements of the section of the Internal Revenue Code governing allocation of income and deductions among taxpayers. 26 U.S.C.A. § 482; West's A.I.C. 6–3–2–2(m). Columbia Sportswear USA Corp. v. Indiana Dept. of State Revenue, 45 N.E.3d 888 (Ind. Tax Ct. 2015).

The constraints on the unitary business principle, under which a state may tax a portion of value that a unitary business derived from its operation within the state, are posed by the Due Process and Commerce Clauses, which require: (1) showing the existence of a unitary business, part of which is carried on in the taxing state, and (2) demonstrating a rational relationship between the taxing state and the intrastate values of the taxpayer's enterprise. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14. Gore Enterprise Holdings, Inc. v. Comptroller of Treasury, 437 Md. 492, 87 A.3d 1263 (2014).

To exclude certain income from the apportionment formula regarding the income of a multi-state unitary business, the business must prove that the income was earned in the course of activities unrelated to those carried out in the taxing state. Glatfelter Pulpwood Co. v. Com., 61 A.3d 993 (Pa. 2013).

[END OF SUPPLEMENT]

Footnotes

1 MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008).

2 MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).
The "unitary business principle" permits a State to tax a corporation on an apportionable share of the multistate business carried on in the taxing state. Gannett Satellite Information Network, Inc. v. State, Dept. of Revenue, 2009 MT 5, 348 Mont. 333, 201 P.3d 132 (2009).
Income apportionment principles, under which each State determines its share of taxable income for a business operating in more than one jurisdiction, apply when a business is unitary. Caterpillar Inc. v. New Hampshire Dept. of Revenue Admin., 144 N.H. 253, 741 A.2d 56 (1999).

3 R.R. Donnelley & Sons Co. v. Arizona Dept. of Revenue, 224 Ariz. 254, 229 P.3d 266 (Ct. App. Div. 1 2010), review denied, (Nov. 30, 2010).

4 As to the source of income theory, see § 477.

5 Jay Wolfe Imports Missouri, Inc. v. Director of Revenue, 282 S.W.3d 839 (Mo. 2009).

Works.

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Part Six. Income Taxes

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B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 479. What is a unitary business

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3477

A.L.R. Library

Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 235 (Complaint, petition or declaration—To recover corporate income tax paid under protest—Domestic corporation entitled to statutory apportionment of income—Unitary multistate operation)

The significance of the concept of "unitary business" lies in its function as a tool in determining whether a taxpayer may be subject to income tax on a formulary apportionment basis.[1] The "unitary business concept" ignores the separate legal existence of corporations for taxation purposes and focuses on such practical business realities as transfers of value among affiliated corporations.[2] A "unitary business," for purposes of apportioning taxable income, is a functionally integrated enterprise, the parts of which are mutually interdependent, such that there is a substantial flow of value between them.[3]

However, substantial mutual independence can be shown in a number of ways, and a substantial flow of goods is not the only one.[4]

Footnotes

1 F. W. Woolworth Co. v. Taxation and Revenue Dept. of State of N. M., 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819 (1982).

2 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

3 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

4 Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983).

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 480. What is a unitary business—Factors

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3477

A.L.R. Library

Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322

Definitions:

"Economies of scale," as a factor in determining whether a business is unitary for tax apportionment purposes, result when integrated businesses gain advantages from an umbrella of centralized management and controlled interaction.[1] "Functional integration," as a factor in determining whether a business is unitary for tax apportionment purposes, refers to transfers between, or pooling among, business segments that significantly affect the business operations of the segments.[2]

The hallmarks of a unitary business relationship, for purposes of apportioning taxable income, are:[3]

• functional integration

• centralized management

• economies of scale

No one fact necessarily determines whether functional integration, centralization of management, or economies of scale exist to the extent necessary to demonstrate a unitary business for taxation purposes.[4] Rather, the issue of whether a business is unitary for taxation purposes is determined on a case-by-case basis,[5] and the totality of the facts are examined and weighed for cumulative effect.[6]

Observation:

A system of interlocking directors and officers is evidence of a unitary business for tax apportionment purposes because of the centralized management and functional integration that results.[7] However, a court must distinguish between connections that demonstrate integration and those that typify investment oversight.[8]

Factors leading a court to determine that a subsidiary was not part of the unitary business of its parents include:[9]

• that the parent and subsidiary did not share any employees, advertising, legal services, or centralized purchasing

• that the subsidiary's activities were accessory services to the parent, rather than basic operational activities

• that the transactions between the subsidiary and parent involved nothing other than a fair market price

Practice Tip:

The taxpayer has the burden of proving the alleged incorrectness of the determination of a state tax agency that a business is unitary.[10]

Footnotes

1 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

2 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

3 MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

4 Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983); Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

5 Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

[6] Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

[7] Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

[8] Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983); Gannett Co., Inc. v. State Tax Assessor, 2008 ME 171, 959 A.2d 741 (Me. 2008).

[9] R.R. Donnelley & Sons Co. v. Arizona Dept. of Revenue, 224 Ariz. 254, 229 P.3d 266 (Ct. App. Div. 1 2010), review denied, (Nov. 30, 2010).

[10] F. W. Woolworth Co. v. Director of Division of Taxation of Dept. of Treasury, 45 N.J. 466, 213 A.2d 1 (1965).

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XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 481. Formula

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3477

A.L.R. Library

Construction and application of Uniform Division of Income for Tax Purposes Act, 8 A.L.R.4th 934

Apportionment is intended to assign the amount of business income of a corporation to a state that is proportional to the amount of income-producing activities in that state.[1] If a unitary business derives income from several states, an apportionment formula is necessary in order to identify the scope of the taxpayer's business that is within the taxing jurisdiction of each state.[2]

An apportionment formula will not be upheld if the formula is intrinsically arbitrary or if it reaches an unreasonable result in a particular case.[3] However, although a state's apportionment formula for determining the income tax liability of unitary businesses may not apportion income perfectly, the Federal Constitution does not require "mathematical exactitude" but only a "rough approximation."[4] Further, statutes dealing with apportionment are construed strictly against the State and in favor of the taxpayer.[5]

Observation:

The apportionment formula for calculating a corporate taxpayer's business earnings for activities within a state is not applied to non-business earnings.[6] Rather, non-business earnings are allocated for tax purposes to the state in which the non-business earnings originated.[7]

CUMULATIVE SUPPLEMENT

Cases:

A violation of constitutional limits on state taxation of interstate companies occurs in the calculation of the Uniform Division of Income for Tax Purposes Act (UDITPA) sales factor only if the Franchise Tax Board's (FTB) alternate UDITPA formula for calculating the taxpayer's income attributable to business activity in a State is out of all proportions to the business transacted in that State. West's Ann.Cal.Rev. & T.Code § 25137. General Mills, Inc. v. Franchise Tax Bd., 208 Cal. App. 4th 1290, 146 Cal. Rptr. 3d 475 (1st Dist. 2012).

Income from a trade or business may be apportioned according to a general formula among jurisdictions in which the business has operations, whereas compensation must be allocated to the place where the employee performed the work. Hillenmeyer v. Cleveland Bd. of Rev., 144 Ohio St. 3d 165, 2015-Ohio-1623, 41 N.E.3d 1164 (2015), cert. denied, 136 S. Ct. 491 (2015).

[END OF SUPPLEMENT]

Footnotes

1 National Holdings, Inc. v. Zehnder, 369 Ill. App. 3d 977, 314 Ill. Dec. 181, 874 N.E.2d 91 (4th Dist. 2007).

2 Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

3 Eastman Kodak Co. v. State Tax Commission, 33 A.D.2d 298, 307 N.Y.S.2d 69 (3d Dep't 1970), order aff'd, 30 N.Y.2d 558, 330 N.Y.S.2d 617, 281 N.E.2d 559 (1972).

4 Caterpillar Inc. v. New Hampshire Dept. of Revenue Admin., 144 N.H. 253, 741 A.2d 56 (1999).

5 Square D Co. v. Kentucky Bd. of Tax Appeals, 415 S.W.2d 594 (Ky. 1967).

6 Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

7 Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

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XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 482. Uniform Division of Income for Tax Purposes Act

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3477

A.L.R. Library

State Tax Consequences of Election Under s338 of Internal Revenue Code (26 U.S.C.A. s338), 26 A.L.R.6th 219

The business income of corporations that operate in multiple states is apportioned between those states for tax purposes under the Uniform Division of Income for Tax Purposes Act (UDITPA).[1]

Observation:

The Multistate Tax Compact's almost word-for-word incorporation of the UDITPA seeks to promote uniformity among the states with respect to taxation of interstate and foreign commerce.[2]

The UDITPA has two main objectives: (1) to promote uniformity in allocation practices among the states that impose taxes on the income of corporations and (2) to relieve the pressure for congressional legislation in this field.[3] It provides that a taxpayer having income from a business activity that is taxable both within and without the state, other than an activity as a financial organization or public utility or the rendering of purely personal services by an individual, must allocate and apportion his or her net income as provided in the Act.[4] Under the Act, a taxpayer is taxable in another state if (1) in that state, he or she is subject to a net income tax, a franchise tax for the privilege of doing business, or a corporate stock tax; or (2) that State has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact the State does or does not.[5]

Practice Tip:

Courts may accord great weight to the interpretation of the state agency that implements the UDITPA in that state.[6]

CUMULATIVE SUPPLEMENT

Cases:

Gain that multi-state telecommunications utility realized from liquidation of its assets in Oregon, including Federal Communications Commission (FCC) license was apportionable business income, for taxation purposes, under business income rule and Uniform Division of Income for Tax Purposes Act. West's Or.Rev. Stat. Ann. §§ 314.280(1), 314.610(1); OAR 150–314.280–(B). Crystal Communications, Inc. v. Department of Revenue, 353 Or. 300, 297 P.3d 1256 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Sherwin-Williams Co. v. Department of Revenue, 329 Or. 599, 996 P.2d 500 (2000).

2 Gannett Satellite Information Network, Inc. v. State, Dept. of Revenue, 2009 MT 5, 348 Mont. 333, 201 P.3d 132 (2009).
In order to achieve uniform taxation among states, North Carolina modeled its Corporate Income Tax Act after the income classification scheme in the UDITPA. Lenox, Inc. v. Tolson, 353 N.C. 659, 548 S.E.2d 513 (2001).

3 Gannett Satellite Information Network, Inc. v. State, Dept. of Revenue, 2009 MT 5, 348 Mont. 333, 201 P.3d 132 (2009).

4 Unif. Division of Income for Tax Purposes Act § 2.

5 Unif. Division of Income for Tax Purposes Act § 3.

6 Arizona Dept. of Revenue v. Central Newspapers, Inc., 222 Ariz. 626, 218 P.3d 1083 (Ct. App. Div. 1 2009), review denied, (May 20, 2010).

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Part Six. Income Taxes

XXVII. Place of Taxation

B. Income of Nonresidents and Foreign Corporations

2. Apportionment

§ 483. Uniform Division of Income for Tax Purposes Act—Tests and factors

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3477

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State Tax Consequences of Election Under s338 of Internal Revenue Code (26 U.S.C.A. s338), 26 A.L.R.6th 219

Under the Uniform Division of Income for Tax Purposes Act (UDITPA), taxable "business income" is defined as income determined under two tests:[1]

(1) the "transactional" test, under which business income is income arising from transactions and activity in the regular course of the taxpayer's trade or business,

(2) the "functional" test, under which business income includes income from tangible and intangible property if the acquisition, management, use or rental, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

While some jurisdictions only apply one test or the other to determine business income,[2] others apply both.[3]

Under UDITPA, all business income is apportioned to the enacting state by multiplying the income by a fraction, the numerator of which is the property factor, plus the payroll factor, plus the sales factor, and the denominator of which is three.[4] The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.[5] The sales to be included in the

sales factor fraction are only the sales which produce business income.[6]

The purpose of the sales factor in the UDITPA is to tax an entity for the benefits that it receives by exploiting a market in that state.[7] However, many transactions that do not generate profit are nevertheless included in sales under the Act, such as sales to consumers at cost or at a loss that are designed to bring customers into a store or promote the company's products and thus ultimately generate profit for the company.[8]

Footnotes

1 Willamette Industries, Inc., & Subsidiaries v. Department of Revenue, 331 Or. 311, 15 P.3d 18 (2000); Union Carbide Corp. v. Huddleston, 854 S.W.2d 87 (Tenn. 1993).

2 Union Carbide Corp. v. Huddleston, 854 S.W.2d 87 (Tenn. 1993).

3 Willamette Industries, Inc., & Subsidiaries v. Department of Revenue, 331 Or. 311, 15 P.3d 18 (2000).

4 Unif. Division of Income for Tax Purposes Act § 9.

5 Unif. Division of Income for Tax Purposes Act § 15.

6 Unif. Division of Income for Tax Purposes Act § 15, comment.

7 M.D.C. Holdings, Inc. v. State ex rel. Arizona Dept. of Revenue, 222 Ariz. 462, 216 P.3d 1208 (Ct. App. Div. 1 2009).

8 General Mills v. Franchise Tax Bd., 172 Cal. App. 4th 1535, 92 Cal. Rptr. 3d 208 (1st Dist. 2009).

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71 Am. Jur. 2d State and Local Taxation Six XXVIII A Refs.

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Part Six. Income Taxes

XXVIII. Accounting Periods and Methods

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3538

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3538

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A. In General

§ 484. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3538

Income taxes are usually based on annual accounting periods.[1] Moreover, the taxable year, representing an accounting period of 12 months, is not reduced to a shorter period by the circumstance that a taxpayer undergoes a change in status or ceases to exist or that the income reported is for less than a 12-month period.[2]

Observation:

A statute may allow for taxpayers to carry an unused credit forward into succeeding tax years[3] though carryover of a credit may also be denied.[4]

Tax statutes in effect at the time of each annual lottery payment to a taxpayer control as to the taxation of that payment.[5]

Footnotes

1 Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).

[2] Malmgren v. McColgan, 20 Cal. 2d 424, 126 P.2d 616 (1942).

[3] SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009).
As to carrying forward deductable losses, see § 493.

[4] Oconto Co. v. Wisconsin Tax Commission, 193 Wis. 488, 214 N.W. 445 (1927).

[5] Sharp v. Department of Revenue of State of Mont., 284 Mont. 424, 945 P.2d 38 (1997).

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XXVIII. Accounting Periods and Methods

A. In General

§ 485. Requirement of consistency

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3538

A taxpayer is required to be consistent in his or her method of accounting and the computation of his or her tax for a given tax year.[1] Thus, a taxpayer, if he or she is on the accrual method, must accrue both expenses and income and, if he or she uses the cash method, must deduct his or her expenses in the year in which paid and must report income in the year in which received.[2] Moreover, income is to be computed for tax purposes under the method of accounting by which the taxpayer regularly reflects its transactions, and once the taxpayer has elected a permissible form of accounting, it is bound thereby.[3]

Footnotes

1 Martin v. State Bd. of Assessment and Review, 225 Iowa 1319, 283 N.W. 418, 120 A.L.R. 1273 (1939).

2 Motors Acceptance Co. v. Atwood, 193 Wis. 41, 214 N.W. 64 (1927).
As to the cash and accrual methods of accounting, see § 486.

3 South Coast Co. v. Franchise Tax Bd., 250 Cal. App. 2d 822, 58 Cal. Rptr. 747 (2d Dist. 1967).

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XXVIII. Accounting Periods and Methods

B. Year in Which Income Is Taxable

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3450, 3480

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3450, 3480

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B. Year in Which Income Is Taxable

§ 486. Cash or accrual

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3450, 3480

Definition:

"Realization" occurs when a taxpayer receives actual economic gain from the disposition of property while "recognition" refers to the time when the tax thereon becomes due and payable.[1] The term "realized," in income tax statutes, means received, paid, debted, or incurred in accordance with the method of accounting authorized for use by the taxpayer.[2]

Income is not necessarily taxable in the year in which it is earned, and the year in which it is taxable may depend upon the method of accounting employed by the taxpayer.[3] Where he or she keeps his or her accounts and makes his or her returns on an accrual basis, income is taxable in the year in which the right to receive it accrues.[4] On the other hand, where he or she keeps his or her accounts and makes his or her returns on a cash basis, income is taxable in the year in which it is received.[5]

On an accrual basis, as distinguished from a cash basis, a taxpayer makes a complete accounting or return for the taxable year of every transaction which determines net or taxable income.[6] In other words, all obligations incurred and all accounts receivable growing out of transactions in such taxable period are reflected in the return for that year whether payable within such taxing period or later.[7]

The accrual method of tax reporting is purely an economic and a bookkeeping procedure whereby it is the right to receive, and not the actual receipt of an income item, which determines the propriety of its inclusion in income for tax purposes.[8] The

basic consideration in determining whether or not income has accrued depends upon whether or not all of the events creating the liability have occurred.[9] Whether a taxpayer is entitled to or bound to accrue an item of income in a certain year depends upon whether there was justification for a reasonable expectation that payment of the item would be made in due course.[10]

The fact that a taxpayer contends that he or she is on a cash basis is not controlling.[11] Real facts and not bookkeeping entries give rise to income, books of accounting being neither indispensable nor conclusive.[12]

A taxpayer may receive income in a particular year, even if it is not reduced to his or her possession in that year, if he or she constructively receives the income.[13] A mere promise or obligation to pay is insufficient to constitute a constructive receipt of income.[14] Rather, there must be a present right to receive the income in order for it to be constructively received.[15] Income is not constructively received, and is not includable in gross income, if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.[16]

Footnotes

1 S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687 (Fla. 1978).

2 Altsuler v. Peters, 190 Neb. 113, 206 N.W.2d 570 (1973).

3 Beech Aircraft Corp. v. State Commission of Revenue and Taxation, 177 Kan. 754, 282 P.2d 432 (1955).

4 Beech Aircraft Corp. v. State Commission of Revenue and Taxation, 177 Kan. 754, 282 P.2d 432 (1955); Johnson v. South Carolina Tax Commission, 235 S.C. 155, 110 S.E.2d 173 (1959).

5 Beech Aircraft Corp. v. State Commission of Revenue and Taxation, 177 Kan. 754, 282 P.2d 432 (1955); Evans v. Comptroller of Treasury, Income Tax Division, 273 Md. 172, 328 A.2d 272 (1974).

6 Beech Aircraft Corp. v. State Commission of Revenue and Taxation, 177 Kan. 754, 282 P.2d 432 (1955).

7 Beech Aircraft Corp. v. State Commission of Revenue and Taxation, 177 Kan. 754, 282 P.2d 432 (1955).

8 South Coast Co. v. Franchise Tax Bd., 250 Cal. App. 2d 822, 58 Cal. Rptr. 747 (2d Dist. 1967).

9 Archer v. Commissioner of Revenue of Ky., 312 Ky. 454, 227 S.W.2d 1001 (1950).

10 Archer v. Commissioner of Revenue of Ky., 312 Ky. 454, 227 S.W.2d 1001 (1950).

11 Johnson v. South Carolina Tax Commission, 235 S.C. 155, 110 S.E.2d 173 (1959).

12 Department of Treasury of Indiana v. Jackson, 110 Ind. App. 36, 37 N.E.2d 31 (1941); Adams v. Burts, 245 S.C. 339, 140 S.E.2d 586 (1965).

13 Weed v. Commissioner of Revenue, 550 N.W.2d 285, 32 U.C.C. Rep. Serv. 2d 1147 (Minn. 1996) (check received by taxpayer from former employer as separation pay, which taxpayer retained but did not cash, was includable in taxpayer's taxable income).

14 Arizona State Tax Commission v. Reiser, 109 Ariz. 473, 512 P.2d 16 (1973).

15 Arizona State Tax Commission v. Reiser, 109 Ariz. 473, 512 P.2d 16 (1973).

16 Weed v. Commissioner of Revenue, 550 N.W.2d 285, 32 U.C.C. Rep. Serv. 2d 1147 (Minn. 1996).

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XXVIII. Accounting Periods and Methods

B. Year in Which Income Is Taxable

§ 487. Installments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3450, 3480

Payments on installment contracts are often, by statute, includable in the computation of state income tax in the year in which the installments are received[1] even if the contract was entered into in a prior year.[2] Some statutes provide that in case of a sale of property, the net income realized may be included for taxation in that portion of any installment payment representing gain or profit in the year in which such payment is received.[3] Under a statute of this type, the deferred payment option continues, where there is a bona fide sale of installment obligations, until the taxpayer realizes a gain.[4]

Observation:

The installment method is a remedial device for dividing a capital gain into discrete taxable events.[5] As a result, not all of the tax liability is incurred in the taxable year of an asset's disposition before the seller has all of the sales proceeds in hand to pay the tax liability on it.[6]

The characterization of the portion of the profit that a seller receives in a particular taxable year as either a capital gain or ordinary income, and the applicable tax rate, are determined as of that taxable year, not the original year of the sale.[7] However, the fact that a party has taken advantage of an election to pay a tax in installments, instead of at one time, is not a contract between the government and the taxpayer that prevents taxation upon income to accrue in a different manner than that provided by law at the time when the taxpayer elected to pay in installments.[8]

Footnotes

1 Altsuler v. Peters, 190 Neb. 113, 206 N.W.2d 570 (1973).

2 Altsuler v. Peters, 190 Neb. 113, 206 N.W.2d 570 (1973).

3 State v. Johnson, 238 Miss. 211, 118 So. 2d 308 (1960).

4 State v. Johnson, 238 Miss. 211, 118 So. 2d 308 (1960).

5 Delucchi v. Franchise Tax Bd., 170 Cal. App. 4th 1264, 88 Cal. Rptr. 3d 840 (3d Dist. 2009).

6 Delucchi v. Franchise Tax Bd., 170 Cal. App. 4th 1264, 88 Cal. Rptr. 3d 840 (3d Dist. 2009).

7 Delucchi v. Franchise Tax Bd., 170 Cal. App. 4th 1264, 88 Cal. Rptr. 3d 840 (3d Dist. 2009).

8 Heyward v. South Carolina Tax Commission, 240 S.C. 347, 126 S.E.2d 15 (1962).

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B. Year in Which Income Is Taxable

§ 488. Taxpayer's death during taxable year

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3450, 3480

A decedent's representative need not include in the return filed by him or her for the period of the taxable year preceding the death of the decedent amounts accrued but not actually received at the time of such death where the decedent was a cash-basis taxpayer.[1]

A statute under which the final, closing income tax return of a decedent must be made on an inventory basis regardless of the method previously used in calculating net income is not unconstitutional.[2]

Footnotes

1 People ex rel. Kernochan v. Gilchrist, 214 A.D. 114, 211 N.Y.S. 617 (3d Dep't 1925), aff'd, 241 N.Y. 589, 150 N.E. 567 (1925).

2 State ex rel. Anderson v. State Bd. of Equalization, 133 Mont. 8, 319 P.2d 221 (1957).

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B. Year in Which Income Is Taxable

§ 489. Income of legatees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3450, 3480

As a general rule, the net income of an estate is taxable to beneficiaries only if it is distributed or distributable to them in the taxable year received by the estate, but it does not follow that only such income is taxable to a legatee.[1]

Footnotes

[1] Malmgren v. McColgan, 20 Cal. 2d 424, 126 P.2d 616 (1942).

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Part Six. Income Taxes

XXVIII. Accounting Periods and Methods

C. Year in Which Items Are Deductible

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3509, 3515

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3509, 3515

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XXVIII. Accounting Periods and Methods

C. Year in Which Items Are Deductible

§ 490. Losses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3515

Generally, losses are deductible in the year in which they are sustained.[1] The loss, to be deductible in a given taxable year, must be definitely ascertainable and not subject to contingencies.[2]

Debts ascertained to be worthless and charged off within the taxable year are such debts as a reasonably prudent person under the same circumstances would consider worthless.[3]

Footnotes

1 Stern v. Gray, 72 N.D. 134, 5 N.W.2d 299 (1942); Commonwealth v. Philadelphia Sav. Fund Soc., 335 Pa. 406, 6 A.2d 840 (1939); In re Pick, 225 Wis. 102, 273 N.W. 537 (1937).

2 Utah-Idaho Sugar Co. v. State Tax Commission, 93 Utah 406, 73 P.2d 974 (1937).

3 Green v. Oklahoma Tax Com'n, 1940 OK 360, 188 Okla. 168, 107 P.2d 180 (1940).
As to what constitutes a bad debt, see § 441.

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C. Year in Which Items Are Deductible

§ 491. Miscellaneous deductible items

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3509

Under a state income tax statute permitting the deduction of taxes "paid within the taxation period," a sum set aside as a reserve by a corporation to pay federal income tax in the succeeding year is not deductible.[1] A regulation limiting the deduction of federal income taxes paid on income subject to income tax in the taxing state to the year in which paid, regardless of whether the taxpayer is on a cash or an accrual basis, has been sustained.[2]

Under a state income tax statute providing for the deduction of interest, interest which is not paid in any year, but added to the principal of the debt, and not deducted from the gross income of the taxpayer in its return, might be carried over as a capital loan.[3]

Footnotes

1 Oahu Railway & Land Co. v. Wilder, 27 Haw. 336, 1923 WL 2783 (1923); State v. Wisconsin Tax Commission, 170 Wis. 506, 175 N.W. 931 (1920).

2 State v. Airesearch Mfg. Co., 68 Ariz. 342, 206 P.2d 562 (1949).

3 Arizona State Tax Commission v. Tucson Gas, Electric Light & Power Co., 55 Ariz. 472, 103 P.2d 467 (1940), opinion modified on other grounds, 55 Ariz. 519, 103 P.2d 955 (1940).

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D. Use of Net Losses in Taxable Years Other than That of Occurrence

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3515

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
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§ 492. Carryover of net losses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3515

A.L.R. Library

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509

In some jurisdictions, a net operating loss can be carried forward as a deduction in subsequent income tax years.[1] The carryover loss deduction afforded by statute is not constitutionally required and is purely a matter of legislative grace.[2] Thus, the legislature has the power to dictate how and to what extent such privilege may be exercised.[3] In many jurisdictions, a taxpayer's state deduction for net operating losses for a tax year is limited to the amount of the federal loss deduction for the same year.[4]

A loss-carryover deduction is limited to the net economic loss of the taxpayer after deducting therefrom the allocable portion of the taxpayer's nontaxable income.[5] In some states, such a carryover is not dependent on whether the taxpayer has a simultaneous federal net operating loss.[6] Since income taxes are usually computed on the basis of an annual accounting of the gains and losses for that year,[7] a taxpayer who seeks an allowance for losses suffered in an earlier year must be able to point to a specific provision of the statute permitting the deduction and must bring himself or herself within its terms.[8]

A corporation resulting from a statutory merger is not the same taxable entity as the separate corporations that were merged so that it cannot deduct the carryover losses of the merged corporations.[9] Moreover, a parent corporation cannot deduct the carryover of a net operating loss sustained by a subsidiary corporation, to which the parent corporation succeeded upon

liquidation of the subsidiary, where the subsidiary's income-producing activities causing the loss were not carried on in the taxing state.[10]

Footnotes

1 Kansas City Southern Ry. Co. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990); NL Industries, Inc. v. North Dakota State Tax Com'r, 498 N.W.2d 141, 33 A.L.R.5th 873 (N.D. 1993).

2 Kansas City Southern Ry. Co. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990); Dayton Rubber Co. v. Shaw, 244 N.C. 170, 92 S.E.2d 799 (1956); Southern Soya Corp. of Cameron v. Wasson, 252 S.C. 484, 167 S.E.2d 311 (1969).

3 Kansas City Southern Ry. Co. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990).

4 Royal Indem. Co. v. Tax Appeals Tribunal, 75 N.Y.2d 75, 550 N.Y.S.2d 610, 549 N.E.2d 1181 (1989).
A bank holding company could not reduce its state income tax through a separate deduction of federal net operating losses over and above the federal net operating loss deduction reflected on the federal return for the corresponding tax year as such losses could only be reflected through the determination of taxable income, which was tied to the federal definition of that term. Utica Bankshares Corp. v. Oklahoma Tax Com'n, 1994 OK 55, 892 P.2d 979 (Okla. 1994), opinion modified on reh'g, (Jan. 24, 1995).

5 Dayco Corp. v. Clayton, 269 N.C. 490, 153 S.E.2d 28 (1967); McJunkin Corp. v. West Virginia Dept. of Tax and Revenue, 193 W. Va. 446, 457 S.E.2d 123 (1995).
As to the effect of a joint return by husband and wife, see § 499.

6 McJunkin Corp. v. West Virginia Dept. of Tax and Revenue, 193 W. Va. 446, 457 S.E.2d 123 (1995).

7 § 484.

8 State Tax Commission v. Fagerberg, 59 Ariz. 29, 122 P.2d 212 (1942).

9 § 439.

10 Minneapolis Star & Tribune Co. v. Commissioner of Taxation, 287 Minn. 117, 177 N.W.2d 33 (1970).

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Part Six. Income Taxes

XXVIII. Accounting Periods and Methods

D. Use of Net Losses in Taxable Years Other than That of Occurrence

§ 493. Carryback of net losses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3515

A.L.R. Library

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509

Under some state income tax statutes, it is permissible to carry back a net operating loss to reduce income tax for a prior year.[1] However, under such a statute, a taxpayer may not deduct federal income taxes either in computing the loss to be carried back or in recomputing the gain which he or she seeks to reduce by applying to it the subsequent loss.[2] A taxpayer engaged in a state unitary business may be entitled to a net operating loss carry-back deduction against its state income tax liability.[3]

Footnotes

1 Reuben L. Anderson-Cherne, Inc. v. Hatfield, 279 Minn. 478, 158 N.W.2d 840 (1967); McJunkin Corp. v. West Virginia Dept. of Tax and Revenue, 193 W. Va. 446, 457 S.E.2d 123 (1995).

2 Reuben L. Anderson-Cherne, Inc. v. Hatfield, 279 Minn. 478, 158 N.W.2d 840 (1967).

[3] Fairchild Semiconductor Corp. v. State Tax Assessor, 1999 ME 170, 740 A.2d 584 (Me. 1999).

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XXIX. Returns

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Pretrial Procedure 388

West's Key Number Digest, Taxation 3540, 3541

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
A.L.R. Index, Tax Returns
West's A.L.R. Digest, Pretrial Procedure 388
West's A.L.R. Digest, Taxation 3540, 3541

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 197

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Part Six. Income Taxes

XXIX. Returns

§ 494. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3540

Income tax is computed on the basis of a return filed by the taxpayer[1] although in some situations, such as with respect to partnerships, the return serves strictly an informational function.[2] Before the State may challenge the correctness of a taxpayer's return by action, it must make its own computation after examination and investigation and serve notice upon the taxpayer.[3] The purpose of an income tax statute is to require the taxpayer to make a return that fairly[4] and clearly[5] reflects actual net income, so a return that accomplishes this purpose satisfies the law.[6]

Filing a tax form is not synonymous with filing a tax return.[7] An income tax return which does not contain any information from which tax liability can be computed does not constitute a return.[8] Tax returns which merely contain an individual's Social Security number, name, and signature and which are accompanied by a blanket Fifth Amendment assertion of privilege are not properly filed returns as provided by law.[9]

One conducting a business for profit who files an individual income tax return giving information practically identical with that required for an unincorporated business tax return is not thereby excused from filing the separate return required for the unincorporated business tax.[10] A taxpayer may not enter an objection or some other equivalent statement on the ground that answers on the tax return or the completion of spaces in the tax return will tend to incriminate the taxpayer when the questions on the state tax form do not suggest that the response will be incriminating.[11] A state court has jurisdiction to order a taxpayer to file income tax returns[12] and also has jurisdiction to find him or her in civil contempt for refusing to do so.[13]

Observation:

If a putative taxpayer chooses to refuse to comply with the requirement that he or she file an income tax return and the State is able to establish a reasonable basis for its demand that he or she file, the burden is upon the taxpayer to establish that the demand is baseless, i.e., that he or she is not subject to the state's income tax laws.[14]

Footnotes

[1] Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 25 A.L.R. 748 (1921), error overruled, 126 Miss. 655, 89 So. 369 (1921).

[2] C. H. Leavell & Co. v. Oklahoma Tax Commission, 1968 OK 127, 450 P.2d 211 (Okla. 1968).

[3] State v. Duluth, M. & N. Ry. Co., 207 Minn. 637, 292 N.W. 411 (1940).

[4] Cook v. Coca Cola Bottling Co., 210 Ark. 928, 198 S.W.2d 193 (1946); Dorgan v. Kouba, 274 N.W.2d 167 (N.D. 1978).

[5] Katz v. Wisconsin Tax Commission, 210 Wis. 625, 246 N.W. 439 (1933).

[6] Cook v. Coca Cola Bottling Co., 210 Ark. 928, 198 S.W.2d 193 (1946).
Income tax returns, which contained identifying information and signatures, but which contained no information from which tax liability could be calculated, were not "tax returns" within the definition of state tax laws. Department of Revenue v. Carpet Warehouse, Inc., 296 Or. 400, 676 P.2d 299 (1984).

[7] Dorgan v. Kouba, 274 N.W.2d 167 (N.D. 1978).

[8] People v. Vickers, 199 Colo. 305, 608 P.2d 808 (1980).

[9] State v. Poncelet, 187 Mont. 528, 610 P.2d 698 (1980); State v. Faul, 300 N.W.2d 827 (N.D. 1980).

[10] Hewitt v. Bates, 297 N.Y. 239, 78 N.E.2d 593, 3 A.L.R.2d 642 (1948).

[11] State v. Faul, 300 N.W.2d 827 (N.D. 1980).

[12] Gillispie v. Sherlock, 279 Mont. 21, 929 P.2d 199 (1996).

[13] Gillispie v. Sherlock, 279 Mont. 21, 929 P.2d 199 (1996).

[14] Department of Revenue v. McCann, 293 Or. 522, 651 P.2d 717 (1982).

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XXIX. Returns

§ 495. Secrecy of returns

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3540

A.L.R. Library

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959

State governments have the power to provide that returns made to their officers to be used in assessing and collecting income taxes shall not be revealed by the officers, and this is a matter resting in the discretion of the state legislatures.[1] The general purpose of nondisclosure tax statutes is to encourage taxpayers to make full and truthful declarations in their returns without fear that such information will be used against them.[2]

Some state statutes make it unlawful for certain tax officials or employees to divulge any information acquired by them regarding tax schedules, returns, or reports required to be filed.[3] Under such statutes, a corporation may recover against a city official for the publication of income tax matter of this sort, but no recovery may be had against a newspaper publisher or private citizen for this offense.[4] A president of a corporation whose income tax returns have been compromised does not have a cause of action against any city official because it is not the president's, but the corporation's, confidence which has been breached.[5] Neither public disclosure by a member or employee of a state tax commission on an inquiry that a named taxpayer has filed a tax return without revealing any of the contents of the return[6] nor disclosure that a named taxpayer's file has been under review or investigation, either authorized or unauthorized, constitutes a prohibited disclosure of information.[7]

Footnotes

[1] Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930).

[2] Sebelius v. LaFaver, 269 Kan. 918, 9 P.3d 1260 (2000).

[3] Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995); Tomlin v. Taylor, 290 Ky. 619, 162 S.W.2d 210 (1942).

[4] Maysville Transit Co. v. Taylor, 296 Ky. 527, 177 S.W.2d 371 (1943).

[5] Tomlin v. Ort, 296 Ky. 528, 177 S.W.2d 371 (1943).

[6] Opinion of the Justices, 113 N.H. 141, 303 A.2d 752 (1973).

[7] Opinion of the Justices, 113 N.H. 141, 303 A.2d 752 (1973).

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XXIX. Returns

§ 496. Secrecy of returns—Discovery and inspection of returns in civil actions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Pretrial Procedure 388

West's Key Number Digest, Taxation 3540

A.L.R. Library

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959

Discovery and inspection of income tax returns in actions between private individuals, 70 A.L.R.2d 240

In some states, statutes prohibit the revelation of the amount of income or the particulars set forth or disclosed in any income tax return except in accordance with a proper judicial or legislative order.[1] A "proper judicial order" is one that orders the disclosure of records sought only after a judge, having considered the matter in light of the total circumstances, has determined that they are relevant.[2] In other words, a proper judicial order issues after a judge has exercised discretion to determine the relevance of the records, not as a matter of course.[3] A proper judicial order is not necessarily limited to an order that effectuates the specific exceptions from confidentiality set out in the statute.[4] A subpoena is not a proper judicial order.[5]

In the absence of a statute, a copy of a state income tax return is not privileged.[6] Still, income tax returns are not automatically discoverable[7] upon a de minimis showing of relevancy.[8] Tax returns are generally not discoverable in the absence of a strong showing that the information is indispensable to the claim and cannot be obtained from other sources.[9] Further, tax returns may not be discovered when the information sought is duplicative of information already provided.[10] In sum, courts do not favor disclosure of income tax returns without some showing that particular information in tax returns has some specific application to the case or that other sources of information are likely to be inaccessible or unproductive.[11]

A party seeking the discovery of income tax returns bears the burden of showing that the returns are relevant and material to

the issues in the case.[12]

Footnotes

1 Sebelius v. LaFaver, 269 Kan. 918, 9 P.3d 1260 (2000); DonBullian v. DeLisa, 246 Md. 734, 230 A.2d 349 (1967); Wisconsin Steel Treating & Blasting Co. v. Donlin, 23 Wis. 2d 379, 127 N.W.2d 5 (1964).

2 Harris v. State, 331 Md. 137, 626 A.2d 946 (1993).

3 Harris v. State, 331 Md. 137, 626 A.2d 946 (1993).

4 Sebelius v. LaFaver, 269 Kan. 918, 9 P.3d 1260 (2000).

5 Harris v. State, 331 Md. 137, 626 A.2d 946 (1993).
A statute permitting the Revenue Cabinet to obtain an order to produce records does not give the Revenue Cabinet independent power to use an administrative summons or subpoena for taxpayers' records. Revenue Cabinet, Com. of Ky. v. Cherry, 803 S.W.2d 570 (Ky. 1990).

6 Peterson v. Peterson, 70 S.D. 385, 17 N.W.2d 920 (1945).

7 Board of Regents of University System of Georgia v. Ambati, 299 Ga. App. 804, 685 S.E.2d 719, 251 Ed. Law Rep. 483 (2009), cert. denied, (Jan. 12, 2010); In re Garth, 214 S.W.3d 190 (Tex. App. Beaumont 2007).

8 Board of Regents of University System of Georgia v. Ambati, 299 Ga. App. 804, 685 S.E.2d 719, 251 Ed. Law Rep. 483 (2009), cert. denied, (Jan. 12, 2010).

9 Pugliese v. Mondello, 57 A.D.3d 637, 871 N.Y.S.2d 174 (2d Dep't 2008).
Tax returns are not material or relevant if the same information can be obtained from other sources, such as a financial statement. In re House of Yahweh, 266 S.W.3d 668 (Tex. App. Eastland 2008).

10 In re Beeson, 2011 WL 3359711 (Tex. App. Houston 1st Dist. 2011).

11 Panasuk v. Viola Park Realty, LLC, 41 A.D.3d 804, 839 N.Y.S.2d 520 (2d Dep't 2007).

12 In re House of Yahweh, 266 S.W.3d 668 (Tex. App. Eastland 2008).

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XXIX. Returns

§ 497. Preparation of return by others

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3540

A.L.R. Library

Constitutionality, construction, and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443

A statute prohibiting, under penalty, any person other than a certified public accountant or an attorney from receiving compensation for making or preparing any income tax return may violate a state constitution as:[1]

- not a reasonable exercise of the police power
- not in promotion of the public welfare
- being arbitrarily discriminatory and without reasonable relation to the advancement of public convenience, health, morals, or safety
- being an infringement of the right to pursue an occupation gainfully

Observation:

A taxpayer who entrusts his or her tax return to the care of a tax preparer for purposes of complying with state tax law does not assume the risk that the tax preparer will voluntarily divulge the information to law enforcement.[2]

Footnotes

1 Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

2 People v. Gutierrez, 222 P.3d 925 (Colo. 2009).
As to the secrecy of tax returns, generally, see § 495.

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Part Six. Income Taxes

XXIX. Returns

§ 498. Consolidated returns

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3541

Income tax laws may permit[1] or require[2] various types of affiliated corporations to file a consolidated return under certain circumstances. Under a statute of this type, affiliated corporations which have no tax status in the taxing state need not be joined in a consolidated return.[3] Under a statute providing for the filing of state income tax returns upon a consolidated basis by corporations which constitute an affiliated group, the fact that a subsidiary has filed a separate income tax return does not prevent its parent from later filing an amended return on behalf of the subsidiary as a member of the affiliated group.[4] A combined report of income is not the same as a consolidated tax return and does not result in the taxing of one corporation on or measured by the income of another.[5]

CUMULATIVE SUPPLEMENT

Cases:

Affiliated group of corporations may file a consolidated federal tax return. 26 U.S.C.A. § 1501. Rodriguez v. Federal Deposit Insurance Corporation, 140 S. Ct. 713 (2020).

Once affiliated group of taxpayers files a consolidated return, group must continue to file as group, unless the Internal Revenue Service (IRS) grants permission for it to deconsolidate. 26 U.S.C.A. § 1501. U.S. v. Bond, 486 B.R. 9 (E.D. N.Y. 2012).

[END OF SUPPLEMENT]

Footnotes

[1] Arizona Dept. of Revenue v. Transamerica Title Ins. Co., 124 Ariz. 417, 604 P.2d 1128 (1979); Gable Industries, Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328 (1975); General Motors Corp. v. Director of Revenue, 981 S.W.2d 561 (Mo. 1998); Baker Nat. Ins. Agency v. Montana Dept. of Revenue, 175 Mont. 9, 571 P.2d 1156 (1977); National Transit Co. v. Boardman, 328 Pa. 450, 197 A. 239 (1938).

[2] Curtis Companies v. Wisconsin Tax Commission, 214 Wis. 85, 251 N.W. 497, 92 A.L.R. 1065 (1933).

[3] Bay Cities Transp. Co. v. Johnson, 8 Cal. 2d 706, 68 P.2d 710 (1937); State v. Oliver Iron Min. Co., 207 Minn. 630, 292 N.W. 407 (1939).

[4] State Tax Com'r v. Publicker Industries, Inc., 267 A.2d 899 (Del. Super. Ct. 1970).

[5] Pioneer Container Corp. v. Beshears, 235 Kan. 745, 684 P.2d 396 (1984).

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Part Six. Income Taxes

XXIX. Returns

§ 499. Joint returns

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3540, 3541

In some states, a married couple may file a joint return, which is to be treated as the return of a taxable unit as though it were made by a single individual.[1] The existence and continuation of the husband-and-wife single taxable unit, as exhibited by the joint return, is essential to claiming and retaining the benefits of a joint return.[2] Thus, the taxable unit, husband and wife, capable of filing a joint return must exist at all crucial times, such as the time when a loss was incurred, as well as the time when the carried-over or carried-back loss is to be offset against income.[3] A statute which requires that married couples who file a joint federal return must file jointly in the state is not unconstitutional.[4]

Observation:

A wife may not segregate her past deductions from a taxable year when both spouses were alive so that she cannot use her deceased husband's deduction in a joint return of joint income and preserve her deduction for subsequent use in a separate return for her income.[5]

Footnotes

[1] Gamble v. State Tax Commission, 248 Or. 621, 432 P.2d 805 (1967).

[2] Gamble v. State Tax Commission, 248 Or. 621, 436 P.2d 558 (1968).

[3] Gamble v. State Tax Commission, 248 Or. 621, 432 P.2d 805 (1967).

[4] Tiefel v. Gilligan, 40 Ohio App. 2d 491, 69 Ohio Op. 2d 426, 321 N.E.2d 247 (10th Dist. Franklin County 1974).

[5] Gamble v. State Tax Commission, 248 Or. 621, 436 P.2d 558 (1968).

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Part Six. Income Taxes

XXIX. Returns

§ 500. Sufficiency of return to start running of statute of limitations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3540, 3541

A.L.R. Library

Income tax: sufficiency of return to start running of statute of limitations, 3 A.L.R.2d 647

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 197 (Answer—Defense—Statute of limitations)

The purpose of statutes of limitation in tax matters is to establish finality in the assessment process.[1] The filing of a state income tax return begins the running of a statute of limitations by which the state tax agency is limited in the amount of time in which it can dispute the tax due according to the return.[2] However, it has been held that the statute of limitations on a claim for gross income tax deficiency began to run when the taxpayers filed their initial return rather than an amended tax return.[3]

The statute of limitations against the assessment of a state income tax does not apply in respect to income not included in a return where a state statute provides that in case a return fails to disclose the total income from all sources, or is incomplete, the tax on the amount not disclosed may be assessed at any time.[4]

Footnotes

1 DiStefano v. Director, Div. of Taxation, 23 N.J. Tax 609, 2008 WL 500130 (2008).
As to the statute of limitations on reassessment by tax agencies, see § 502.

2 Hewitt v. Bates, 297 N.Y. 239, 78 N.E.2d 593, 3 A.L.R.2d 642 (1948).

3 DiStefano v. Director, Div. of Taxation, 23 N.J. Tax 609, 2008 WL 500130 (2008).

4 Forrester v. Americus Oil Co., for Use of Brown, 66 Ga. App. 743, 19 S.E.2d 328 (1942).

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Part Six. Income Taxes

XXX. Assessment and Collection

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530, 3537, 3538, 3554, 3560 to 3563

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A.L.R. Index, Income Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3437, 3530, 3537, 3538, 3554, 3560 to 3563

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Part Six. Income Taxes

XXX. Assessment and Collection

A. In General

§ 501. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530, 3537, 3560

An "assessment" is the State's official estimate of the amount of a taxpayer's tax liability and/or deficiency.[1] A state legislature has the power to create the right to assess an income tax against the citizens of the state, and it has the power to fix the conditions under which the tax should be assessed and enforced so that compliance with those conditions is essential if the remedy is not to be lost, and the rights are not to cease to exist.[2] In assessing taxes, the tax assessor must comply with the directives of state law, and assessments that are made outside the ambit of state law are illegal.[3] A state tax assessment operates in a way that is functionally indistinguishable from a judgment of a court of law and creates an absolute legal obligation to make a payment by a date certain.[4]

A deficiency income tax assessment upon which an execution has been issued by the state tax agency administrator is presumed to be prima facie correct, and the burden is upon the taxpayer in his or her pleadings and proof to show clear and specific error or unreasonableness in the assessment.[5] Notices of income tax deficiency are invalid if they are vague and misleading.[6] Where it does not appear from the record that a tax has been paid, it is presumed to be unpaid.[7]

Liability for income tax arises, and in some sense, it may be said that the tax accrues, at the time when the income is received, and does not depend upon an assessment.[8] However, a statute of limitations barring a state tax agency from making an assessment beyond a certain lapsed period starts to run only when the prescribed return is filed.[9]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer was not denied procedural due process as a result of Mississippi sales and income tax assessments sent to him by regular mail, rather than certified mail, even though taxpayer did not remember whether he received the assessments, given that the assessments were sent to the same address the Mississippi Department of Revenue (MDOR) had mailed other notices by certified mail, return receipt requested, including a tax assessment for prior period, which taxpayer admitted he received, and the record did not show any fault with the service of the sales and income tax assessments sent by regular mail. U.S.C.A. Const.Amend. 14; Miss. Code. Ann. § 27-65-37. In re Blalock, 537 B.R. 284 (Bankr. S.D. Miss. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Brown v. Comptroller of Treasury, 130 Md. App. 526, 747 A.2d 232 (2000).

2 State v. Bies, 258 Minn. 139, 103 N.W.2d 228 (1960).

3 DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).
The inclusion of a certificate required by statute is necessary for a notice of tax deficiency issued by a state department of revenue to be valid. Preble v. Department of Revenue, 331 Or. 320, 14 P.3d 613 (2000).

4 Franchise Tax Bd. of California v. U.S. Postal Service, 467 U.S. 512, 104 S. Ct. 2549, 81 L. Ed. 2d 446 (1984).

5 Brosnan v. Undercofler, 111 Ga. App. 95, 140 S.E.2d 517 (1965).

6 DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

7 Northwestern Lumber Co. v. Wisconsin Tax Commission, 202 Wis. 372, 231 N.W. 865 (1930).

8 Wootten v. Oklahoma Tax Com'n, 1935 OK 54, 170 Okla. 584, 40 P.2d 672 (1935).

9 Hewitt v. Bates, 297 N.Y. 239, 78 N.E.2d 593, 3 A.L.R.2d 642 (1948).

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Part Six. Income Taxes

XXX. Assessment and Collection

A. In General

§ 502. Reassessment by tax agency

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3537

Under many state income tax statutes, the state tax agency or administrator may make a deficiency assessment upon a finding that additional income tax is due.[1] A state tax agency may act under a provision of this nature only on the basis of new and additional information[2] and only in the space of time set by statute.[3] Such a provision is not unconstitutional simply because it grants judicial powers to an administrative agency.[4]

While the presumption is that an additional assessment of income tax is correct and the burden is on the taxpayer to overcome such presumption,[5] contrary authority exists.[6] A state tax agency, in making a deficiency assessment, is not bound within the narrow confines of bookkeeping entries and has the right and duty to consider substance above form.[7] Under some statutes, the state taxing authority is authorized to assess additional state tax created by a change in the taxpayer's federal taxable income after being notified of that change.[8]

Observation:

A general three-year limitation statute against making assessments upon tax returns from the date when they are filed or are due may not apply where the taxing authority sends notices to taxpayers of assessments of additional state income tax after the Federal Internal Revenue Service.[9]

To the extent that a taxpayer's income tax return is intentionally or mistakenly erroneous, any special arrangements made by

a state tax agency with the taxpayer on the basis thereof do not estop the agency from making a later deficiency assessment.[10]

The statutory time within which a reassessment may be made runs from any date to which the time for filing may have been extended.[11] However, a state tax agency may not make an unjustified and arbitrary deficiency assessment against a taxpayer for the sole purpose of extending a statutory period within which it is required to determine the amount of tax due from the taxpayer.[12]

Footnotes

1 Magma Copper Co. v. Arizona State Tax Com'n, 67 Ariz. 77, 191 P.2d 169 (1948); Garrou Knitting Mills v. Gill, 228 N.C. 764, 47 S.E.2d 240 (1948); Langer v. Gray, 73 N.D. 437, 15 N.W.2d 732 (1944); Wisconsin Dept. of Taxation v. O. H. Kindt Mfg. Co., 13 Wis. 2d 258, 108 N.W.2d 535 (1961).

2 State v. Lyons, 184 Wis. 175, 197 N.W. 585 (1924).

3 Heasley v. Engen, 124 N.W.2d 398 (N.D. 1963).

4 Buick Motor Co. v. City of Milwaukee, Wis., 48 F.2d 801 (C.C.A. 7th Cir. 1931).

5 Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); Calder v. Graves, 261 A.D. 90, 24 N.Y.S.2d 797 (3d Dep't 1941), order aff'd, 286 N.Y. 643, 36 N.E.2d 688 (1941).

6 Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

7 Calder v. Graves, 261 A.D. 90, 24 N.Y.S.2d 797 (3d Dep't 1941), order aff'd, 286 N.Y. 643, 36 N.E.2d 688 (1941).

8 PMAG, Inc. v. Commissioner of Revenue, 429 Mass. 35, 705 N.E.2d 1130 (1999).

9 Brown v. Comptroller of Treasury, 130 Md. App. 526, 747 A.2d 232 (2000).

10 Buick Motor Co. v. City of Milwaukee, Wis., 48 F.2d 801 (C.C.A. 7th Cir. 1931).

11 Langer v. Gray, 73 N.D. 437, 15 N.W.2d 732 (1944).

12 Brown v. New York State Tax Commission, 199 Misc. 349, 99 N.Y.S.2d 73 (Sup 1950), order aff'd, 279 A.D. 837, 109 N.Y.S.2d 626 (4th Dep't 1952), order aff'd, 304 N.Y. 651, 107 N.E.2d 510 (1952).

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§ 503. Requirement of hearing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530

An income taxpayer who disputes a deficiency assessment is constitutionally guaranteed the right to a hearing before the state tax agency.[1] However, the filing by an income taxpayer of its objections to a deficiency assessment, in the form of an affidavit opposing the proposed assessment, and an application for a revision of the tax, and their denial by the state tax agency, do not constitute a hearing.[2] Failure to give the notice required by statute of the hearing on the question of liability to a deficiency assessment of state income tax is an irregularity which, unless waived, will avoid the assessment.[3]

A state's summary income tax collection procedures which allow the State to collect amounts due by seizing and selling the taxpayer's property without prior notice or a hearing, but which provides for subsequent judicial review by way of suit for refund, does not violate a taxpayer's right to due process.[4]

The requirement of a prior hearing is not applicable to a tax collection proceeding.[5]

Footnotes

1 Dant & Russell v. Pierce, 122 Or. 337, 255 P. 603 (1927).

2 Dant & Russell v. Pierce, 122 Or. 337, 255 P. 603 (1927).

3 State v. Pollock, 251 Ala. 603, 38 So. 2d 870, 7 A.L.R.2d 757 (1948).

4 Bomher v. Reagan, 522 F.2d 1201 (9th Cir. 1975).

[5] Kelly v. Springett, 527 F.2d 1090 (9th Cir. 1975).

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§ 504. Enforcement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3560 to 3563

State statutes providing that delinquent taxes become a lien on the property owned by the taxpayer apply to income taxes.[1] Such a lien may be constitutionally imposed on the property of a nonresident without regard to whether the taxes assessed were on income arising out of the same property.[2] Moreover, a nonresident is subject to the same enforcement proceedings for nonpayment of income taxes as is a resident.[3] Some statutes provide that a state tax official may enforce a state tax lien through a writ of execution.[4] An action to collect delinquent taxes is also a method for collecting taxes.[5]

Some statutes provide for the imprisonment of a person failing to pay income tax past due.[6] A municipal ordinance which provides that imprisonment is a proper penalty for a conviction for willfully failing or refusing to pay municipal income tax does not violate a state constitutional prohibition against imprisonment for nonpayment of debt.[7]

Footnotes

1 Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

2 Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

3 In re Vautier, 340 Mass. 341, 164 N.E.2d 317 (1960).

4 Comptroller of Treasury v. Washington Restaurant Group, Inc., 339 Md. 667, 664 A.2d 899 (1995).

5 Comptroller of Treasury v. Washington Restaurant Group, Inc., 339 Md. 667, 664 A.2d 899 (1995).

[6] State v. Taylor, 490 N.W.2d 536 (Iowa 1992); In re Vautier, 340 Mass. 341, 164 N.E.2d 317 (1960).

[7] City of Cincinnati v. DeGolyer, 25 Ohio St. 2d 101, 54 Ohio Op. 2d 232, 267 N.E.2d 282, 48 A.L.R.3d 1318 (1971).

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§ 505. Administration; piggyback collection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530

With respect to state income taxes, the administrator of a state tax agency is vested with no right other than to interpret and administer the state income tax statute as enacted by the legislature.[1] The duty to administer and enforce a state income tax law is an administrative duty and not a judicial one.[2]

In determining an amount due the State as income tax from a taxpayer, the state tax agency administrator acts in a ministerial capacity even where he or she is required to exercise a discretion judicial in nature, and unless appealed from, his or her decision becomes final and conclusive in the absence of fraud or omission.[3] On the other hand, a state tax agency, in the administration of its income tax statute, acts both in a ministerial and judicial or quasi-judicial capacity, and in conducting a hearing; receiving evidence, oral or documentary; and rendering its decision based upon such evidence, it acts in a judicial or quasi-judicial capacity.[4] However, it is not within the administrator's power to forgive income taxes owed by an individual.[5]

Observation:

Because a state tax piggy-backs on a federal return, any eventual change in the federal return will affect the state tax, resulting either in deficiencies or refunds.[6]

Footnotes

1 Rathborne v. Collector of Revenue, 196 La. 795, 200 So. 149 (1941).

2 Sprague Oil Service, Inc. v. Fadely, 189 Kan. 23, 367 P.2d 56 (1961).

3 Champlin v. Oklahoma Tax Com'n, 1933 OK 169, 163 Okla. 185, 20 P.2d 904 (1933).

4 State v. Airesearch Mfg. Co., 68 Ariz. 342, 206 P.2d 562 (1949).

5 Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), order clarified, 250 Miss. 54, 163 So. 2d 745 (1964).

6 In re Holt, 1997 OK 12, 932 P.2d 1130 (Okla. 1997).

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§ 506. Audits

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530, 3537, 3538

In some states, statutory provision is made for the auditing of a taxpayer's income tax return or, to the end of determining a taxpayer's taxable income, examining his or her books and records and taking testimony from appropriate persons.[1] A state income tax act containing provisions for the examination of the books and records of a taxpayer, and requiring the attendance and testimony of witnesses to ascertain certain facts in connection with the income tax return, is not unconstitutional as violating the prohibition of unreasonable searches and seizures.[2]

A field audit contemplates a verification of the facts as reported in the income tax return of the taxpayer, and a complete review of the taxpayer's books for the purpose of establishing accurately and finally the facts with respect to its income.[3] The field audit is therefore intended to foreclose any further inquiry into the facts relative to the taxpayer's income for the year or years under audit.[4] An office audit, that is, one conducted in the office of the state tax agency, is, under some statutes, narrower in effect than a field audit but does not preclude the state tax agency from making field audits of the books and records of the taxpayer and from making further adjustments, corrections, and assessments of income.[5]

Some states have agreements with the Internal Revenue Service for exchanging information obtained by either the state or federal tax agency in auditing the returns of taxpayers subject to both federal and state income taxes.[6]

Footnotes

1 Magma Copper Co. v. Arizona State Tax Com'n, 67 Ariz. 77, 191 P.2d 169 (1948); Wisconsin Dept. of Taxation v. O. H. Kindt Mfg. Co., 13 Wis. 2d 258, 108 N.W.2d 535 (1961).

2 Vilas v. Iowa State Bd. of Assessment and Review, 223 Iowa 604, 273 N.W. 338 (1937).

[3] Bechaud v. Wisconsin Tax Commission, 235 Wis. 23, 290 N.W. 632 (1940).

[4] Bechaud v. Wisconsin Tax Commission, 235 Wis. 23, 290 N.W. 632 (1940).

[5] Magma Copper Co. v. Arizona State Tax Com'n, 67 Ariz. 77, 191 P.2d 169 (1948); Wisconsin Dept. of Taxation v. O. H. Kindt Mfg. Co., 13 Wis. 2d 258, 108 N.W.2d 535 (1961).

[6] Wisconsin Dept. of Taxation v. O. H. Kindt Mfg. Co., 13 Wis. 2d 258, 108 N.W.2d 535 (1961).

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§ 507. Withholding

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530, 3554, 3560

Statutes pursuant to which employers must withhold income tax from compensation paid to their employees and remit the same to the taxing authority are common.[1] The power to enact such statutes arises from the police power and not the power to tax.[2]

A withholding tax statute does not deprive an employer of property without due process on the theory that employers, in withholding taxes free of charge to the taxing authority, do services that should be compensable.[3] Additionally, the fact that employers are not paid for their services does not deprive them of equal protection merely because other tax statutes in the same jurisdiction make provisions for compensation of employers.[4]

Under some statutes, the state tax agency has a lien on all tangible assets of the employer for delinquent withholding taxes.[5] Further, under a statute providing for a trust for the benefit of the state on funds withheld from employees' wages for payment of their state income tax liability, when such funds are withheld, they are no longer the property of the employer or the employee.[6]

Footnotes

1 Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920).
Indiana's income tax scheme provides that individuals make payments on their adjusted gross income throughout the year. Wiles v. Indiana Dept. of State Revenue, 881 N.E.2d 105 (Ind. Tax Ct. 2008).

2 Sherman-Reynolds, Inc. v. Mahin, 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

[3] Sherman-Reynolds, Inc. v. Mahin, 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

[4] Sherman-Reynolds, Inc. v. Mahin, 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

[5] Phillips Petroleum Co. v. Wagstaff, 22 Utah 2d 177, 450 P.2d 100 (1969).

[6] George v. Com., 276 Va. 767, 667 S.E.2d 779, 57 A.L.R.6th 803 (2008).

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3547, 3549 to 3551

A.L.R. Library

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§ 508. Tax court or similar agency

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3547

Some states have tax courts,[1] tax boards or offices of appeal,[2] or tax commissions,[3] which are adjudicatory administrative agencies in the executive branch of state government.[4] Such agencies are established to develop and apply specialized expertise in the prompt, fair, and uniform resolution of state tax cases.[5]

A tax court or tax board of appeals is responsible for determining factual issues,[6] and a party to an appeal before a tax court or board of tax appeals may obtain a hearing upon request.[7] The rules of civil procedure govern tax court proceedings.[8]

Observation:

A state tax court or similar agency may have limited jurisdiction to rule on the constitutional issue but may declare a law unconstitutional only as to a particular case.[9] The question of whether a tax statute is unconstitutional on its face may be raised initially in the appellate courts even if that question was not previously raised before the tax court or similar agency.[10]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer's failure to file a notice of appeal within 60 days after the filing of an order of the Commissioner of Revenue divested the tax court of subject matter jurisdiction over the appeal, where statutory time limits for taxpayers to bring administrative appeals before the tax court were strictly construed and were jurisdictional in nature, statutory provision at issue contained mandatory language, and taxpayer did not seek an extension of time to appeal. M.S.A. § 271.06. Soyka v. Commissioner of Revenue, 834 N.W.2d 711 (Minn. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Miller Brewing Co. v. Indiana Department of State Revenue, 903 N.E.2d 64 (Ind. 2009); Frey v. Comptroller of Treasury, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012); Byers v. Commissioner of Revenue, 741 N.W.2d 101 (Minn. 2007).

2 State, Dept. of Revenue v. DynCorp and Subsidiaries, 14 P.3d 981 (Alaska 2000); Brown v. Levin, 119 Ohio St. 3d 335, 2008-Ohio-4081, 894 N.E.2d 35 (2008).

3 In re Westmoreland-LG & E Partners North Carolina, 174 N.C. App. 692, 622 S.E.2d 124 (2005); Grasso v. Oklahoma Tax Com'n, 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011); Benjamin v. Utah State Tax Com'n, 2011 UT 14, 250 P.3d 39 (Utah 2011); Dettwiler v. Wisconsin Dept. of Revenue, 301 Wis. 2d 512, 2007 WI App 125, 731 N.W.2d 663 (Ct. App. 2007).

4 Frey v. Comptroller of Treasury, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).

5 Miller Brewing Co. v. Indiana Department of State Revenue, 903 N.E.2d 64 (Ind. 2009).

6 State, Dept. of Revenue v. DynCorp and Subsidiaries, 14 P.3d 981 (Alaska 2000); Lovell v. Levin, 116 Ohio St. 3d 200, 2007-Ohio-6054, 877 N.E.2d 667 (2007).

7 Brown v. Levin, 119 Ohio St. 3d 335, 2008-Ohio-4081, 894 N.E.2d 35 (2008).

8 Langer v. Commissioner of Revenue, 773 N.W.2d 77 (Minn. 2009).

9 Byers v. Commissioner of Revenue, 741 N.W.2d 101 (Minn. 2007).

10 Lovell v. Levin, 116 Ohio St. 3d 200, 2007-Ohio-6054, 877 N.E.2d 667 (2007).

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B. Review

§ 509. Judicial appeal from tax court or similar agency

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3549 to 3551

Tax courts or similar agencies are often subject to the same standards of judicial review as other administrative agencies.[1] Appellate courts review de novo a state tax court or similar agency's conclusions of law[2] and interpretation of relevant statutes[3] though some courts give deference to the appellate tax board or similar agency's expertise in interpreting the state's tax laws.[4] Other authority holds that a tax commission's legal rulings are subject to an appellate court's plenary, independent, and non-deferential re-examination.[5]

Appellate courts generally review tax court's findings of fact for clear error[6] or under a substantial[7] or sufficient[8] evidence standard. Some authority applies a de novo standard in reviewing a tax court's findings that combine facts and law[9] while other authority affirms a tax court's conclusion regarding a mixed question of fact and law if it is supported by substantial evidence.[10]

When reviewing a final order of a tax court, an appellate court will reverse if:[11]

- the tax court was without jurisdiction
- the order of the tax court was not justified by the evidence or was not in conformity with the law
- the tax court committed any other error of law

Practice Tip:

When reviewing the decision of an administrative agency, such as the tax court or tax commission, an appellate court reviews the

agency's decision directly, not the decision of the lower court.[12]

Some state income tax statutes provide that review is limited to the record made before the state tax agency.[13] A taxpayer's failure to raise a claim before an administrative agency may result in a waiver of that issue on appeal.[14]

CUMULATIVE SUPPLEMENT

Cases:

The Court of Special Appeals undertakes a severely limited review of Tax Court decisions, giving great deference to the Tax Court's fact-finding and great weight to the Tax Court's interpretation of the tax laws, but reviews its application of the case law without special deference. Zorzit v. Comptroller, 225 Md. App. 158, 123 A.3d 627 (2015).

Tax court's use of incorrect figure when summarizing income approach did not render tax court's valuation of taxpayer's distribution-warehouse property clearly erroneous, where error was not material to tax court's final analysis. Medline Industries, Inc. v. County of Hennepin, 941 N.W.2d 127 (Minn. 2020).

Taxpayer bank failed to preserve for appellate review argument that Commissioner of Revenue could not overcome statutory presumption regarding alternative apportionment method for net income because Commissioner only presented evidence showing gross income, where bank did not make argument before tax court. Minn. Stat. Ann. §§ 290.20(1), 290.191. Associated Bank, N.A. v. Commissioner of Revenue, 914 N.W.2d 394 (Minn. 2018).

Tax court's order, which affirmed Commissioner of Revenue's original assessment imposing tax liability on taxpayers, was justified by the evidence submitted to challenge Commissioner's decision to disallow charitable-contribution deductions claimed on income tax return, even though Commissioner submitted evidence of computational error in calculating tax liability; evidence of computational error was not relevant to tax court's determination, Commissioner's determination was official order and attested that the order of assessment was correct, and court affirmed the amount of taxes in the order and entered relief requested in parties' stipulation. M.S.A. § 270C.33. Antonello v. Commissioner of Revenue, 2016 WL 4536510 (Minn. 2016).

The Supreme Court reviews the tax court's legal determinations de novo, but its review of the tax court's findings of fact is limited to determining whether there is sufficient evidence to support the court's decision. Conga Corp. v. Commissioner of Revenue, 868 N.W.2d 41 (Minn. 2015).

While factual findings of a Tax Court judge are entitled to deference because of that court's expertise in the field, the judge's interpretation of a statute is not entitled to such deference and is subject to the Supreme Court's de novo review. Waksal v. Director, Div. of Taxation, 215 N.J. 224, 71 A.3d 878 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Frey v. Comptroller of Treasury, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).

2 Miller Brewing Co. v. Indiana Department of State Revenue, 903 N.E.2d 64 (Ind. 2009); Byers v. Commissioner of

Revenue, 741 N.W.2d 101 (Minn. 2007); Grasso v. Oklahoma Tax Com'n, 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011).

[3] Watts v. Arizona Dept. of Revenue, 221 Ariz. 97, 210 P.3d 1268 (Ct. App. Div. 1 2009); Hohmann v. Commissioner of Revenue, 781 N.W.2d 156 (Minn. 2010); Jay Wolfe Imports Missouri, Inc. v. Director of Revenue, 282 S.W.3d 839 (Mo. 2009); Grasso v. Oklahoma Tax Com'n, 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011).

[4] Geoffrey, Inc. v. Commissioner of Revenue, 453 Mass. 17, 899 N.E.2d 87 (2009).
The supreme court extends cautious deference to decisions within the special expertise of the tax court and will not reverse unless the tax court's ruling is clearly erroneous. Indiana Dept. of State Revenue v. Belterra Resort Indiana, LLC, 935 N.E.2d 174 (Ind. 2010), opinion modified on other grounds on reh'g, 942 N.E.2d 796 (Ind. 2011).

[5] Grasso v. Oklahoma Tax Com'n, 2011 OK CIV APP 37, 249 P.3d 1258 (Div. 1 2011).

[6] Byers v. Commissioner of Revenue, 741 N.W.2d 101 (Minn. 2007); Rock v. Department of Taxes, 170 Vt. 1, 742 A.2d 1211 (1999).

[7] Frey v. Comptroller of Treasury, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012); Yilmaz, Inc. v. Director, Div. of Taxation, 390 N.J. Super. 435, 915 A.2d 1069 (App. Div. 2007), also published at, 23 N.J. Tax 361, 2007 WL 1429420 (Super. Ct. App. Div. 2007); Benjamin v. Utah State Tax Com'n, 2011 UT 14, 250 P.3d 39 (Utah 2011).
Appellate courts apply the "whole record" test where the evidence is conflicting to determine if the Property Tax Commission's decision has any rational basis. In re Westmoreland-LG & E Partners North Carolina, 174 N.C. App. 692, 622 S.E.2d 124 (2005).

[8] Sanchez v. Commissioner of Revenue, 770 N.W.2d 523 (Minn. 2009).An appellate court will affirm the factual findings of the tax board of appeals if the record contains reliable and probative support for these determinations. Lovell v. Levin, 116 Ohio St. 3d 200, 2007-Ohio-6054, 877 N.E.2d 667 (2007).

[9] Arizona Dept. of Revenue v. Central Newspapers, Inc., 222 Ariz. 626, 218 P.3d 1083 (Ct. App. Div. 1 2009), review denied, (May 20, 2010).

[10] Comptroller of Treasury v. Science Applications Intern. Corp., 405 Md. 185, 950 A.2d 766 (2008).

[11] Byers v. Commissioner of Revenue, 741 N.W.2d 101 (Minn. 2007).
A decision by the appellate tax board will not be modified or reversed if the decision is based on both substantial evidence and a correct application of the law. Geoffrey, Inc. v. Commissioner of Revenue, 453 Mass. 17, 899 N.E.2d 87 (2009).

[12] Comptroller of Treasury v. Science Applications Intern. Corp., 405 Md. 185, 950 A.2d 766 (2008); Dettwiler v. Wisconsin Dept. of Revenue, 301 Wis. 2d 512, 2007 WI App 125, 731 N.W.2d 663 (Ct. App. 2007).

[13] Leathers v. Warmack, 341 Ark. 609, 19 S.W.3d 27 (2000); Title Ins. Co. v. State Bd. of Equalization, 4 Cal. 4th 715, 14 Cal. Rptr. 2d 822, 842 P.2d 121 (1992); Baker v. Wisconsin Tax Commission, 210 Wis. 557, 246 N.W. 695 (1933).

[14] Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill. 2d 262, 230 Ill. Dec. 991, 695 N.E.2d 481 (1998).

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Part Six. Income Taxes

XXX. Assessment and Collection

B. Review

§ 510. Trial de novo

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3547, 3549 to 3551

Under some statutes, a further appeal of the result of the first appeal to the court structure is heard de novo.[1] On the other hand, where there is no applicable statute, the contrary has been held.[2]

Footnotes

1 Thompson v. King Plow Co., 74 Ga. App. 758, 41 S.E.2d 431 (1947).

2 State Tax Com'r v. Wilmington Trust Co., 266 A.2d 419 (Del. Super. Ct. 1968).

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XXX. Assessment and Collection

B. Review

§ 511. Initiation by taxpayer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3547, 3549

A taxpayer is generally entitled, by statute, to a review of an assessment of income tax,[1] but the burden is upon him or her to show error in the assessment,[2] and he or she must bring himself or herself within the statute.[3] The doctrine of exhaustion of administrative remedies[4] applies to cases in which an income taxpayer seeks review of his or her assessment.[5] Further, a taxpayer must follow the statutory procedure for a review,[6] and if he or she fails to make proper objections, he or she may lose his or her right to a judicial review.[7]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayers were required to pay filing fees for appeal to superior court from County Board of Assessors' valuation of real property, for property tax purposes. West's Ga.Code Ann. §§ 9–15–4(a), 15–6–77, 15–6–77.2, 48–5–311(g). Fitzpatrick v. Madison County Bd. of Tax Assessors, 734 S.E.2d 397 (Ga. 2012).

Electricity distribution cooperatives' notices of appeal raised challenges only to the Commissioner of Revenue's property tax valuation orders, and thus cooperatives had 60 days in which to appeal, as provided by statute governing appeals from orders of the Commissioner, where cooperatives stated that they were appealing from the valuation notices, the appeals in question invoked the tax court's jurisdiction under statute governing appeals from orders of the Commissioner, and none of the appeals in question referenced statutes on challenges to tax resulting from a Commissioner's order. Minn. Stat. Ann. §§ 271.06(2), 273.372(2)(b). Lake Country Power Cooperative v. Commissioner of Revenue, 916 N.W.2d 863 (Minn. 2018).

[END OF SUPPLEMENT]

Footnotes

[1] Sack v. State, 259 Neb. 463, 610 N.W.2d 385 (2000); Pabst v. Wisconsin Dept. of Taxation, 19 Wis. 2d 313, 120 N.W.2d 77, 5 A.L.R.3d 594 (1963).

[2] South Coast Co. v. Franchise Tax Bd., 250 Cal. App. 2d 822, 58 Cal. Rptr. 747 (2d Dist. 1967); Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

[3] Hoover Grain Co. v. Thoresen, 58 N.D. 359, 226 N.W. 521 (1929).

[4] Am. Jur. 2d, Administrative Law §§ 474 to 479.

[5] Gorham Mfg. Co. v. State Tax Commission of New York, 266 U.S. 265, 45 S. Ct. 80, 69 L. Ed. 279 (1924).

[6] Le Croy v. Cook, 211 Ark. 966, 204 S.W.2d 173, 1 A.L.R.2d 1032 (1947); Sack v. State, 259 Neb. 463, 610 N.W.2d 385 (2000).

[7] Liebhardt v. Department of Revenue, 123 Colo. 369, 229 P.2d 655 (1951); Gordon v. State Tax Commission, 335 Mass. 431, 140 N.E.2d 453 (1957); People ex rel. New York Trust Co. v. Graves, 265 A.D. 94, 37 N.Y.S.2d 900 (3d Dep't 1942), order aff'd, 290 N.Y. 785, 50 N.E.2d 108 (1943); Interstate Finance Corp. v. Wisconsin Dept. of Taxation, 28 Wis. 2d 262, 137 N.W.2d 38 (1965).

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Part Six. Income Taxes

XXX. Assessment and Collection

C. Penalties

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3220, 3563

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3220, 3563

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C. Penalties

§ 512. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3563

A statute may set out penalties including—
— requiring corporate taxpayers to pay the an interest penalty on outstanding taxes.[1]
— a negligence penalty when the taxpayer has failed to pay state taxes owed and a reasonable investigation into the applicable rules and statutes would have revealed that the taxes were due.[2]
— a percentage penalty based on the amount of any underpayment.[3]
While the legislature may confer upon an administrative officer power to enforce such penalties, it does not have the power to delegate to such administrative officer an uncontrolled discretionary power to determine the amount of the penalty to be imposed in each case.[4] However, state taxing authorities are often given the power to assess penalties within legislatively mandated guidelines.[5] Taxpayers may have the burden of proof in establishing the absence of negligence to avoid a penalty assessment for a tax deficiency.[6]

Practice Tip:

Some jurisdictions have statutes authorizing the cancellation[7] or abatement[8] of tax penalties.

CUMULATIVE SUPPLEMENT

Cases:

Phrase "all taxes due" in the Tax Delinquency Amnesty Act, which established an amnesty program for all taxpayers owing any tax imposed by Illinois law, meant taxes that were properly reportable at the time the initial tax return was required to be filed, rather than taxes assessed and due at the time the amnesty application was made, and therefore when taxpayer failed to pay such taxes during the amnesty period, it became liable for statutory interest penalty; taxes generally became due upon the deadline for filing a tax return, and Act did not define phrase "all taxes due." S.H.A. 35 ILCS 745/10. Metropolitan Life Ins. Co. v. Hamer, 2013 IL 114234, 371 Ill. Dec. 766, 990 N.E.2d 1144 (Ill. 2013).

A willful attempt to defeat or evade taxation, so as to warrant imposition of a double assessment, does not include negligence, carelessness, misunderstanding or unintentional understatement of income. M.G.L.A. c. 62C, § 28. Schussel v. Commissioner of Revenue, 472 Mass. 83, 32 N.E.3d 1239 (2015).

[END OF SUPPLEMENT]

Footnotes

[1] U.S. West, Inc. v. Department of Revenue, 2008 MT 125, 343 Mont. 1, 183 P.3d 16 (2008); William Wrigley, Jr., Co. v. Wisconsin Dept. of Revenue, 176 Wis. 2d 795, 500 N.W.2d 667 (1993).

[2] Benjamin v. Utah State Tax Com'n, 2011 UT 14, 250 P.3d 39 (Utah 2011).

[3] Hvizdak v. Com., 985 A.2d 984 (Pa. Commw. Ct. 2009).

[4] Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

[5] Preston v. Idaho State Tax Com'n, 131 Idaho 502, 960 P.2d 185 (1998).

[6] Hiett v. Director of Revenue, 899 S.W.2d 870 (Mo. 1995).

[7] AvalonBay Communities, Inc. v. County of Los Angeles, 197 Cal. App. 4th 890, 128 Cal. Rptr. 3d 690 (2d Dist. 2011), as modified on denial of reh'g, (July 21, 2011).

[8] Central Water Dist. Associates, Ltd. Partnership v. Commissioner of Revenue, 76 Mass. App. Ct. 311, 921 N.E.2d 1013 (2010), review denied, 456 Mass. 1106, 925 N.E.2d 864 (2010) (sufficient grounds for abatement not shown).

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XXX. Assessment and Collection

C. Penalties

§ 513. Tax evasion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3563

Specific statutory provisions sometimes make the motive to avoid or evade income tax material and provide for a special rate of tax or a special method of computing tax where such motive is shown to exist.[1] Both successful and unsuccessful attempts to evade that tax may be subject to a penalty under a jurisdiction's tax evasion statute.[2]

Where changes in basic facts are actual and not merely simulated, they do not constitute evasion of income taxation although that was their purpose.[3] Moreover, a taxpayer may decrease the amount of his or her income tax, or altogether avoid such tax, by any means,[4] no matter how devious,[5] which the law permits.[6]

The Equal Protection Clause does not require that, under a state income tax statute which provides for both civil and criminal penalties, all violators be either prosecuted both criminally and civilly or not at all.[7]

Footnotes

1 Curtis Companies v. Wisconsin Tax Commission, 214 Wis. 85, 251 N.W. 497, 92 A.L.R. 1065 (1933).
By statute, it is a misdemeanor for failure to pay withholding taxes if the defendant willfully failed to account for or pay over such taxes. Gibson v. Com., 276 Va. 176, 662 S.E.2d 54 (2008).

2 State v. Eyre, 2008 UT 16, 179 P.3d 792 (Utah 2008).

3 Commissioner of Corporations and Taxation v. Bullard, 313 Mass. 72, 46 N.E.2d 557, 146 A.L.R. 772 (1943).

4 Stone v. Stone, 319 Mich. 194, 29 N.W.2d 271, 174 A.L.R. 1349 (1947).

[5] Cliffs Chemical Co. v. Wisconsin Tax Commission, 193 Wis. 295, 214 N.W. 447 (1927).

[6] Edison Cal. Stores v. McColgan, 30 Cal. 2d 472, 183 P.2d 16 (1947) (persons may adopt any lawful means for the lessening of the burden of income taxes).

[7] State v. Roggensack, 15 Wis. 2d 625, 113 N.W.2d 389 (1962).

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§ 514. Defenses and mitigation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3220, 3563

A state tax agency administrator may abate an income tax penalty where a taxpayer's delinquency resulted from his or her reliance on the ruling of a former state tax agency, which ruling was later changed by a court decision.[1] In addition, a statutory penalty for 30 days' delinquency in the payment of any tax may not be imposed where the taxpayer exercised his or her right of appeal from the assessment within the 30 days after the tax became payable.[2] A taxpayer is not subject to the penalty fixed for failure to make an income tax return by reason of an omission from a return made.[3]

Footnotes

1 In re Abbott's Estate, 213 Minn. 289, 6 N.W.2d 466 (1942).

2 State v. Pollock, 251 Ala. 603, 38 So. 2d 870, 7 A.L.R.2d 757 (1948).

3 State v. Pollock, 251 Ala. 603, 38 So. 2d 870, 7 A.L.R.2d 757 (1948).

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Part Six. Income Taxes

XXXI. Refunds

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3554, 3555, 3557, 3558

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3554, 3555, 3557, 3558

Forms

Am. Jur. Legal Forms 2d §§ 238:12, 238:13

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 53, 198

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Part Six. Income Taxes

XXXI. Refunds

§ 515. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3554, 3555, 3557

A statute providing a procedure for contesting taxation does not completely waive a State's sovereign immunity.[1] Rather, it only allows refunds for improperly collected taxes.[2] However, in some states, the recovery of taxes erroneously collected or paid is a matter of governmental grace.[3] In the absence of a statute authorizing a recovery, there can be no recovery of taxes voluntarily, though erroneously, paid[4] as by, for example, not taking full advantage of a legal deduction.[5]

Income tax paid under a mistake of law, with full knowledge of the facts, cannot be recovered unless recovery is authorized by statute.[6] The facts rendering a payment of income tax a refundable overpayment or a refundable erroneous payment need not exist when the return is made.[7]

Observation:

A statute providing that a state income tax refund may be paid solely to a surviving spouse may apply only to joint income tax returns filed by individuals.[8]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayers had standing to bring an action for the refund of corporate taxes paid to the state due to the Franchise Tax Board's (FTB) denial of their request to elect the Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula, since the Multistate Tax Compact specifically extended the right to elect the UDITPA apportionment formula not to the party states but to taxpayers as third parties regulated under the Compact. West's Ann.Cal.Rev. & T.Code §§ 19382, 38006. Gillette Co. v. Franchise Tax Bd., 209 Cal. App. 4th 938, 147 Cal. Rptr. 3d 603 (1st Dist. 2012).

A taxpayer is the only party who can make an income tax refund claim, because no one else is authorized and entitled to receive a tax refund. Miss. Code Ann. §§ 27-7-51(1), 27-7-313. Caesars Entertainment, Inc. v. Mississippi Department of Revenue, 295 So. 3d 466 (Miss. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Bailey v. State, 348 N.C. 130, 500 S.E.2d 54 (1998).

2 Bailey v. State, 348 N.C. 130, 500 S.E.2d 54 (1998).

3 Peterson v. Sundt, 67 Ariz. 312, 195 P.2d 158 (1948).

4 Peterson v. Sundt, 67 Ariz. 312, 195 P.2d 158 (1948).
Taxpayer was not entitled to file a claim for refund after voluntarily paying a tax liability under a state's tax amnesty program. Wiles v. Indiana Dept. of State Revenue, 881 N.E.2d 105 (Ind. Tax Ct. 2008).

5 Union Pac. R. Co. v. State, 166 Colo. 307, 443 P.2d 375 (1968).

6 Tucson Title Ins. Co. v. State Tax Commission of Arizona, 59 Ariz. 334, 127 P.2d 341 (1942).

7 State ex rel. Rice v. Mississippi Institute of Aeronautics, 198 Miss. 288, 22 So. 2d 372 (1945).

8 Bryant v. Bowers, 182 N.C. App. 338, 641 S.E.2d 855 (2007).

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XXXI. Refunds

§ 516. Requirement that tax be paid under compulsion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3554, 3555, 3557, 3558

Forms

Am. Jur. Legal Forms 2d § 238:12 (Protest—Of tax payment)

In some states, the taxpayer must pay the tax involuntarily[1] or under protest[2] to entitle him or her to maintain a suit to recover an overpayment. However, a statutory requirement that a tax be paid or security given for its payment, as a prerequisite for its recovery, is not such duress or compulsion as to obviate the necessity of payment under protest.[3]

Footnotes

1 District of Columbia v. Brady, 288 F.2d 108 (D.C. Cir. 1960).

2 Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

3 Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

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Part Six. Income Taxes

XXXI. Refunds

§ 517. Claim procedure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3554, 3555, 3557

Forms

Am. Jur. Legal Forms 2d § 238:13 (Claim for refund of state taxes)
Am. Jur. Pleading and Practice Forms, State and Local Taxation § 53 (Checklist—Drafting complaint to recover tax payments)
Am. Jur. Pleading and Practice Forms, State and Local Taxation § 198 (Answer—Defense—Failure to state a claim on which relief can be granted—Failure to duly file claim for refund)

A taxpayer must precisely follow the refund procedures delineated by statute.[1] A court cannot expand the methods for seeking tax refunds expressly provided by the legislature.[2]

A statute of limitation on tax refund claims is an almost indispensable element of fairness as well as of practical administration of an income tax policy.[3] However, a claim for refund, filed within the statutory period of limitations, may not be denied because by the time that the state tax agency had made its determination that the claim was valid, the limitation period had run.[4]

Some state statutes expressly provide means by which a taxpayer may bring an action for recovery of taxes wrongfully or illegally collected.[5]

Footnotes

[1] Matteson v. Director of Revenue, State of Mo., 909 S.W.2d 356 (Mo. 1995); Bradley v. Williams, 195 W. Va. 180, 465 S.E.2d 180 (1995).

[2] Woosley v. State of California, 3 Cal. 4th 758, 13 Cal. Rptr. 2d 30, 838 P.2d 758 (1992), as modified on denial of reh'g, (Dec. 31, 1992).

[3] Fadner v. Commissioner of Revenue Services, 281 Conn. 719, 917 A.2d 540 (2007).

[4] State ex rel. Northwest Airlines v. Minnesota Tax Com'n, 208 Minn. 195, 293 N.W. 243 (1940).

[5] Cook v. Wofford, 209 Ark. 824, 192 S.W.2d 550 (1946); Parke, Davis & Co. v. Cook, 198 Ga. 457, 31 S.E.2d 728, 156 A.L.R. 1360 (1944).

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Part Six. Income Taxes

XXXI. Refunds

§ 518. Recovery of interest

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3554, 3555, 3557

A.L.R. Library

Right to interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823

A taxpayer's entitlement to interest on a refund can be authorized only by legislative enactment.[1] Similarly, absent a statute, a State is not liable for interest on a judgment rendered against it on a claim for refund of income taxes illegally assessed.[2] The denial of interest in a situation of this sort has been justified on the theory that interest is allowed only where there is a delay or default of the debtor, but that delay or default cannot be attributed to the State since the State is presumed to be always ready to pay what it owes.[3]

Footnotes

1 Comptroller of Treasury v. Science Applications Intern. Corp., 405 Md. 185, 950 A.2d 766 (2008).

2 Ford Motor Co. v. Baker, 71 N.D. 298, 300 N.W. 435 (1941).

3 Monarch Mills v. South Carolina Tax Com'n, 149 S.C. 219, 146 S.E. 870 (1929) (overruled on other grounds by, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741, 25 Ed. Law Rep. 656 (1985)).

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